

# SURVIVOR-CENTRED JUSTICE FOR GENDER-BASED VIOLENCE IN COMPLEX SITUATIONS

Research report informed by case studies from Afghanistan, Honduras,  
Papua New Guinea, the Philippines, South Sudan, and Tunisia



The Global  
Women's Institute

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THE GEORGE WASHINGTON UNIVERSITY

Survivor-Centred Justice for Gender-Based Violence in Complex Situations

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# **SURVIVOR-CENTRED JUSTICE FOR GENDER- BASED VIOLENCE IN COMPLEX SITUATIONS**

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# FOREWORD

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Gender-based violence (GBV) against women and girls remains a pervasive problem around the world<sup>1</sup> and it is on the rise. During the COVID-19 pandemic, cases of GBV saw a sharp increase.<sup>2</sup> The COVID-19 pandemic is only one of the crises compounding the rates of GBV against women and girls. This human rights violation, rooted in gender inequality, is further exacerbated by the unprecedented climate crisis, growing conflicts, deepening inequalities and democratic backsliding. Seventy percent of women experience GBV in humanitarian or crisis contexts,<sup>3</sup> compared to the global average of 30 percent. In the aftermath of some climate emergencies, a three-fold increase in domestic violence cases has been reported.<sup>4</sup>

Recognizing the vast challenge posed by GBV to the realization of humanity's aspirations of equality, peace and sustainable development, the International Development Law Organization (IDLO) and the Global Women's Institute (GWI) at George Washington University forged a partnership to conduct research with the aim to identify survivor-centred approaches to addressing GBV in complex situations. New research in six countries across the globe – namely Afghanistan,<sup>5</sup> Honduras, Papua New Guinea, the Philippines, South Sudan, and Tunisia – provided the basis for the present report. The six country case studies offer different perspectives of complexity in accessing justice in situations of conflict, organized crime, climate disasters, and health emergencies, often intersecting

with contexts of legal pluralism and political transition.

The partnership was an ideal mix of expertise and resources. As the only global intergovernmental organization exclusively devoted to promoting the rule of law to advance peace and sustainable development, IDLO has been researching, developing, and applying survivor/ victim-centered approaches in response to GBV, as part of its justice programming, for many years. Combatting GBV remains a key objective under IDLO's Strategic Plan 2021-2024 and remains one of IDLO's largest thematic portfolios. GWI is a globally recognized leader in the field of GBV and has pioneered research on the prevalence of violence against women and girls in conflict settings. Since its launch in 2012, GWI has brought together world class faculty, researchers, students, practitioners, and policymakers to focus on the most critical issues facing women and girls today through research, education and action for change.

Our new report shows, once again, that in situations of crisis and other complexities, women are more likely to experience violence and other forms of gender-based discrimination and less likely to receive justice. Survivors of GBV face a myriad of challenges in pursuing justice for GBV in these circumstances. They range from social norms that stigmatize or blame survivors, community pressure to withdraw a report, fear of reprisals, lack of economic resources, to constraints within justice institutions and, in many contexts, a general culture of impunity.



Our new report is very clear in highlighting these profound challenges. And it also moves forward to recommend concrete approaches and practices to increase access to justice for survivors of GBV in complex situations. The recommendations and the more detailed account of promising approaches in each substantive chapter are essential because they provide concrete tools for decision-makers and practitioners. We wish to underline the need to develop and implement a comprehensive survivor-centred justice response to GBV. This is, in fact, essential particularly in complex situations that are often characterized by a breakdown of the functioning of justice.

IDLO and GWI would like this report to contribute to ongoing efforts to stave off the assault on women and girls' rights that is currently intensifying in many places around the world, regardless of their development ranking. We fully support the new vision for the rule of law

as noted in the UN Secretary-General's 'Our Common Agenda', the commitments to eradicate violence against women and girls, and promote peace, justice and inclusive societies as inscribed in the 2030 Agenda, and the bold action plan of the Generation Equality Forum.

International cooperation is essential and can create agreement on what needs to be done, but change, irreversible change, can only happen if survivors are listened to, believed, and included in all decision-making about their lives, with respect for their diversity. Change can only happen if women's collective action and advocacy is supported.

We urge you to read this report in a spirit of urgency of the change that needs to happen. We invite you to take forward its recommendations. And we remain committed to our own partnership to put the findings of the report into action.

**Jan Beagle**

Director-General  
International Development Law  
Organization

**Mary Ellsberg**

Founding Director  
Global Women's Institute

# EXECUTIVE SUMMARY

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**Gender-based violence (GBV) against women is a human rights violation and is both a cause and consequence of gender inequality.** GBV is globally prevalent, takes multiple forms and affects women throughout their life cycle, irrespective of income levels or social status. In turn, gender inequality, as well as intersecting forms of discrimination – based on age, sexual orientation, gender identity, ethnicity, migrant or internally displaced person (IDP) status, health status, etc. – have a negative impact on women’s ability to report violence and access justice.

**Women and girls’ vulnerability to violence is exacerbated in complex contexts, such as conflict, organized crime, health emergencies and the climate crisis,** where GBV is more common and more severe. In complex settings, women face heightened difficulties in accessing justice and protection due to weakened justice systems or disrupted justice and service delivery, as well as low levels of trust in State institutions. Other challenges include the inability or unwillingness of States to address GBV, particularly in conflict situations, or the de-prioritization of GBV responses, as evidenced during the COVID-19 pandemic. In situations of crisis, women are more likely to experience violence and less likely to receive justice.

IDLO, in partnership with GWI at George Washington University, conducted research in six countries across the globe with the aim to identify survivor-centred approaches to addressing GBV in complex situations. The country case studies were

selected to provide different perspectives of complexity in accessing justice and an analysis of diverse justice mechanisms dealing with GBV **in situations of conflict, organized crime, climate disasters and health emergencies, often intersecting with contexts of legal pluralism and political transition.** The six case studies are as follows:

## CASE STUDIES: JUSTICE MECHANISMS ADDRESSING GBV IN COMPLEX SITUATIONS

### Afghanistan

Data that was collected before August 2021 showed that women in Afghanistan experienced various forms of violence, the majority of which occurred in domestic settings and were connected to traditional practices such as forced and child marriages, honour killings, as well as the custom of giving away girls as a method of settlement of disputes (*baad*).

Insecurity and protracted conflict had seriously affected the capacity of the Afghan justice sector to resolve legal disputes and deliver justice outcomes, resulting in the majority of the population seeking justice through informal and customary mechanisms.

Despite significant improvements in women’s meaningful participation in the political, economic, cultural and social life of the country over two decades, multiple challenges remained to be addressed, including security concerns, inadequate implementation of laws, and limited funding and capacity across governmental institutions to tackle GBV. The state of uncertainty that the country



entered after 15 August 2021 has exposed progress towards gender equality and reducing GBV as particularly fragile.

### **Honduras**

Honduras reflects a complex and unstable context, marked by organized crime, corruption and some of the highest levels of violence globally among countries where war has not been declared, resulting in an erosion of the rule of law, high rates of forced displacement and increased vulnerability of women and girls.

Honduras has the highest femicide rate in the world. In 2019, a majority of reported femicides were linked to organized crime. Despite promising innovation in the legal framing of GBV linked to organized crime, important barriers to access to justice remain related to inadequate penalties, widespread impunity, limited transparency and public participation in the legal reform process, insufficient State funding to civil society actors defending women's rights, and lack of trust in the formal justice system.

### **Papua New Guinea**

Papua New Guinea is one of the most culturally, geographically and linguistically diverse countries globally, affected by high gender inequality. Women are largely absent from political and administrative governance, as well as key customary, religious and private decision-making structures.

Levels of GBV in the country are some of the highest in the world, particularly with regard to SARV and intimate partner violence (IPV). GBV is fuelled by social norms around communal rather than individual accountability alongside a culture of retribution between different tribal groups, resulting in harmful social

and gender norms, such as bride price and polygamy.

Despite emerging evidence showing that justice and support services for women are increasing in Papua New Guinea, significant barriers to accessing justice for survivors persist, including the perception of GBV as a family matter to be resolved within the accepted customary system.

### **Philippines**

The Philippines is an archipelago in Southeast Asia on the frontlines of global climate change. Being located both in the typhoon belt and the Pacific Ring of Fire, the country is visited by an average of 20 typhoons annually and is likewise prone to earthquakes and volcanic eruptions. It is also affected by concerning rates of GBV against women, particularly IPV, sexual exploitation, rape, physical injuries and trafficking in persons, which far from abating, in fact increase during post-disaster scenarios. Evidence shows that in these situations, sex becomes a means of exchange for food, water and other goods. Additionally, gaps in referral systems to police, courts and relevant services hinder access to justice for GBV survivors in the country.

In addressing these issues, government action plans related to disasters have integrated human rights, gender mainstreaming and women's participation considerations.

GBV data demonstrates that climate change and disaster are not gender-neutral events and highlights the need to further mainstream a gendered and intersectional approach in disaster risk reduction and management, including related policy and programming.

## South Sudan

Since gaining independence in 2011, South Sudan has been marred by ongoing conflicts related to political and ethnic divisions, a deteriorating economy, and rates of GBV against women and among the highest in the world, of which IPV is the most common form.

Conflict-related sexual violence by armed actors has increased in the country in the past decade, and women and girls' vulnerability is compounded by intercommunal conflicts over cattle, often resolved through bride prices, revenge attacks or cattle raids, involving killing, rape and abduction. Other harmful, patriarchal practices such as child and forced marriage, wife inheritance and polygamy enhance discriminatory conditions for women and girls.

Justice for GBV survivors is most frequently accessed at the local level through the customary justice system. The latter is dominated by male chiefs and tends to focus on restoring and maintaining peace within a community, rather than ensuring accountability of perpetrators or protecting victims. The weakening of justice institutions and the rule of law as a result of the crisis, the lack of a dedicated law on GBV and a culture of impunity have made it less likely that perpetrators are held accountable through formal justice, thus discouraging survivors from reporting cases of GBV.

## Tunisia

Tunisia underwent a democratic transition following the 2011 Jasmine Revolution and the adoption of a new Constitution in 2014 (subsequently superseded in 2022), which enshrines equality between men and women and commits to taking the necessary

measures to eradicate violence against women. In 2018, Tunisia promulgated a special law on violence against women, which was widely viewed as an essential step in advancing justice for survivors, as part of a comprehensive response to GBV.

Despite progress towards respect for fundamental rights and freedoms, the country still experiences high rates of GBV, particularly domestic violence and abuse, and sexual harassment in public spaces. Persisting patriarchal attitudes and practices limit women's participation in public life and decision-making and impede their access to socio-economic rights such as education, property and equal work opportunities, contributing to a "*feminization of poverty*" and to women's lack of access to justice. This is exacerbated by a gender bias of justice actors handling crimes committed against women, the justice sector's rudimentary infrastructure and lengthy processes, and by women's lack of awareness of their own rights, which further hinder access to justice for GBV survivors.

## JUSTICE GAPS AND CHALLENGES FOR GBV SURVIVORS IN COMPLEX SITUATIONS

As evidenced in this study, survivors face a myriad of challenges in pursuing justice for GBV starting with barriers to reporting and access all along the justice chain, as well as in the implementation of laws and policies, the ability of GBV survivors to access support services, and the lack of primary prevention measures. While the countries in focus face specific challenges, many of the barriers to justice for GBV survivors are cross-cutting.

With respect to the **legal framework**, while all focus countries have adopted special laws to address GBV, with the

exception of South Sudan, inadequate criminal law provisions on GBV persist, including procedural rules and lack of recognition of emerging forms of violence. Other legal obstacles include discriminatory standards deeply entrenched in broader legal frameworks, including family and personal status laws.

**Social and cultural barriers** to GBV survivors' access to justice mechanisms include patriarchal social norms and structural gender inequalities that permeate families and communities, such as the normalization of many forms of GBV against women, and pressure on victims not to report. Economic barriers often prevent survivors from accessing formal justice. Low awareness among survivors of laws available to protect them, where and how to report crimes, and of available support services creates additional obstacles.

**Institutional challenges** are related to the integrity of formal justice actors and their capacity to handle GBV cases, fuelling distrust in the formal justice system, including: corruption and lack of judicial independence; lack of gender sensitiveness and mistreatment of survivors by the police; limited financial resources and forensic specialist capacity, and poor information systems; lack of data collection to track national trends and respond to GBV; procedural barriers, including evidentiary challenges and lack of adequate procedural safeguards for victims; low penalties and impunity.

While support services are crucial for survivors accessing justice, the **gaps in essential services provision** are staggeringly wide in the complex situations examined in this report. There is a lack of a multisectoral coordination

framework for survivor-centred services and of a State authority responsible for its implementation. Functional, easily accessible referral pathways are absent, creating a gap in linking State services, humanitarian actors, and local organizations, and in delineating respective roles and responsibilities in handling GBV cases and referral procedures.

Finally, **primary prevention** efforts are afforded the least attention. The countries in focus lack comprehensive, context-responsive, long-term national prevention strategies and frameworks encompassing primary prevention and addressing gender inequality, harmful social and gender norms, power imbalances, and the culture of acceptance of GBV. At the local and community levels, there are insufficient GBV awareness raising activities and efforts to promote positive social norms through a whole-of-community approach and empowering survivors to seek support and access justice.

## APPROACHES AND PRACTICES TO INCREASE ACCESS TO JUSTICE FOR GBV SURVIVORS IN COMPLEX SITUATIONS

The report stresses that a **survivor-centred approach** is key to fulfilling the promise of justice in response to GBV in all circumstances, including complex situations. It highlights promising pathways to justice for GBV survivors, in particular, in the following areas:

**Law reform to address GBV.** Promising approaches in this regard include revising criminal law to include offences related to GBV; reforming existing civil and family laws to strengthen women's rights within marital and family relations; enacting special laws on violence against women;

and strategic litigation to set precedent on GBV.

#### **Measures to increase access to justice.**

Among the promising interventions showcased in the case studies include specialized GBV courts, police and prosecution units as well as humanitarian sector approaches to addressing justice for GBV, such as including rule of law and justice coordination mechanisms in United Nations peacekeeping missions or in humanitarian assistance through the GBV sub-cluster. Also identified as good practices are legal aid services, paralegals and other community-based accompaniment and access to justice support. Increasing access to protection orders; engagement with customary and informal justice; training of justice providers and specialised mechanisms for data collection and review.

**Essential services.** To address the short-, medium- and long-term needs of survivors in accessing and navigating justice, essential services must be in place. These services for GBV survivors should include: specialized women's organizations and civil society actors; legal aid, including case management and legal accompaniment; psychosocial counselling; one-stop centres; shelters; health services; and referral pathways and multisectoral coordination systems.

**Primary prevention.** Increased attention on developing prevention models appropriate for humanitarian settings was highlighted as a promising approach. Also highlighted that the need for a gradual shift of focus from awareness generation programmes to promoting community-based prevention and economic empowerment programmes for women and girls. Primary prevention interventions must also build upon evaluated prevention programmes that

have been implemented in contexts of protracted conflicts.

### **KEY RECOMMENDATIONS IN PROMOTING SURVIVOR-CENTRED JUSTICE FOR GBV IN COMPLEX SETTINGS:**



**Develop and implement a comprehensive survivor-centred justice response to GBV** that meets the needs of diverse women through an intersectional approach delivered using effective gender-responsive laws and justice institutions.



**Foster integration of services for GBV survivors** in ways that enhance prevention, protection, and access to redress through both formal and informal pathways to justice.



**Strengthen legal empowerment of women** by raising awareness of laws and rights and providing legal support services directly to GBV survivors.



**Support women's collective action and advocacy** by safeguarding civic space and providing targeted financing for local women's organizations and essential community networks.



**Expand GBV monitoring and data collection** and strengthen research on what works to ensure that policies and practices are evidence-based and can be measured for accountability.

# ACRONYMS

|                 |                                                                                 |
|-----------------|---------------------------------------------------------------------------------|
| <b>CEDAW</b>    | Convention on the Elimination of Discrimination against Women                   |
| <b>CHRP</b>     | Commission for Human Rights in the Philippines                                  |
| <b>CIJS</b>     | Customary and informal justice systems                                          |
| <b>CRSV</b>     | Conflict-related sexual violence                                                |
| <b>CSO</b>      | Civil society organization                                                      |
| <b>DHS</b>      | Demographic health survey                                                       |
| <b>FPO</b>      | Family protection order                                                         |
| <b>FSC</b>      | Family Support Centres                                                          |
| <b>FSVAC</b>    | Family and Sexual Violence Action Committee                                     |
| <b>FSVU</b>     | Family and Sexual Violence Unit                                                 |
| <b>GBV</b>      | Gender-based violence                                                           |
| <b>GREVIO</b>   | Group of Experts on Action against Violence against Women and Domestic Violence |
| <b>GWI</b>      | Global Women's Institute                                                        |
| <b>HIV</b>      | Human immunodeficiency virus                                                    |
| <b>IDLO</b>     | International Development Law Organization                                      |
| <b>IPO</b>      | Interim protection order                                                        |
| <b>IPV</b>      | Intimate partner violence                                                       |
| <b>IRC</b>      | International Rescue Committee                                                  |
| <b>IUDPAS</b>   | Institute for Democracy, Peace and Security                                     |
| <b>JSS4D</b>    | Justice Services and Stability for Development Program                          |
| <b>KUSWA</b>    | Kafe Urban Settlers Women's Association                                         |
| <b>LEVAW</b>    | Law on Elimination of Violence Against Women                                    |
| <b>LGBTQI+:</b> | Lesbian, gay, bisexual, transgender, queer and intersex plus                    |
| <b>MDG</b>      | Millennium Development Goal                                                     |

|                |                                                                    |
|----------------|--------------------------------------------------------------------|
| <b>MENA</b>    | Middle East and North Africa                                       |
| <b>MESECVI</b> | Follow-up Mechanism to the Belém do Pará Convention                |
| <b>NATO</b>    | North Atlantic Treaty Organization                                 |
| <b>NCD</b>     | National Capital District of Papua New Guinea                      |
| <b>NGO</b>     | Non-governmental organization                                      |
| <b>OCHA</b>    | United Nations Office for the Coordination of Humanitarian Affairs |
| <b>OHCHR</b>   | Office of the United Nations High Commissioner for Human Rights    |
| <b>PNG</b>     | Papua New Guinea                                                   |
| <b>PTSD</b>    | Post-traumatic stress disorder                                     |
| <b>R-ARCSS</b> | Revitalized Agreement on Resolving the Conflict in South Sudan     |
| <b>SARV</b>    | Sorcery accusation related violence                                |
| <b>SDG</b>     | Sustainable Development Goal                                       |
| <b>UN</b>      | United Nations                                                     |
| <b>UNAMA</b>   | United Nations Assistance Mission in Afghanistan                   |
| <b>UNDP</b>    | United Nations Development Programme                               |
| <b>UNFPA</b>   | United Nations Population Fund                                     |
| <b>UNHCR</b>   | United Nations High Commissioner for Refugees                      |
| <b>UNICEF</b>  | United Nations Children's Fund                                     |
| <b>UNMISS</b>  | United Nations Mission in South Sudan                              |
| <b>UNODC</b>   | United Nations Office on Drugs and Crime                           |
| <b>VAW</b>     | Violence against women                                             |
| <b>VAWC</b>    | Violence against women and their children                          |
| <b>VAWG</b>    | Violence against women and girls                                   |
| <b>WDG</b>     | Women Development Group                                            |
| <b>WHO</b>     | World Health Organization                                          |
| <b>WPS</b>     | Women, Peace, and Security                                         |



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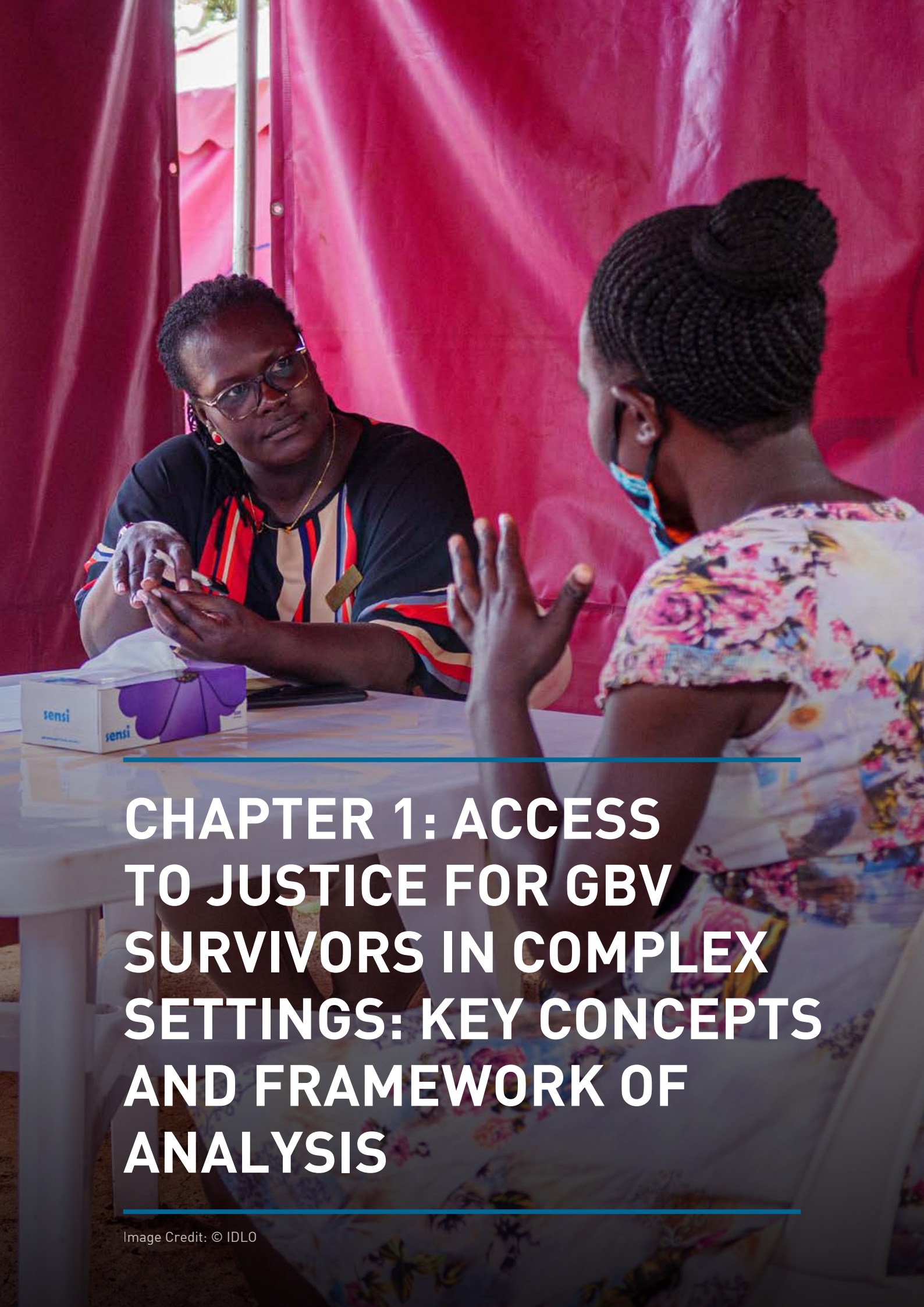
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A photograph of two women sitting at a white table under a red tent. The woman on the left, wearing glasses and a black shirt with red and blue stripes, is looking at the woman on the right. The woman on the right, wearing a floral shirt and a face mask, is gesturing with her hands. A box labeled 'sensi' is on the table. The background is a red tent wall.

# CHAPTER 1: ACCESS TO JUSTICE FOR GBV SURVIVORS IN COMPLEX SETTINGS: KEY CONCEPTS AND FRAMEWORK OF ANALYSIS

# CHAPTER 1: ACCESS TO JUSTICE FOR GBV SURVIVORS IN COMPLEX SETTINGS: KEY CONCEPTS AND FRAMEWORK OF ANALYSIS

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## INTRODUCTION

**Gender-based violence (GBV) against women is a grave human rights violation and is both a cause and consequence of gender inequality.** It is globally prevalent, takes multiple forms and affects women throughout their lives, regardless of income levels or social status. While all women and girls may be vulnerable to violence, women facing intersecting forms of discrimination based on age, sexual orientation, gender identity, ethnicity, national origin, race or caste, disability or health status, are at an increased risk.

**Women and girls' vulnerability to violence is exacerbated in complex contexts such as conflict, organized crime, global pandemics and climate emergencies.** While conflict in particular gives rise to systematic GBV, such as rape perpetrated by members of armed forces, women and girls often remain at greatest risk of physical, sexual or emotional injury in their own homes from family members or intimate partners.

**In complex settings, women face heightened difficulties in accessing justice and protection.** This may be due to weakened justice systems or disrupted justice processes and service delivery, as well as low levels of trust in State institutions. Other challenges include inability or unwillingness of States to address GBV, particularly in conflict situations, or the de-prioritization of GBV responses, as evidenced during the COVID-19 pandemic.

**Thus, in situations of crisis, women are more likely to experience violence and less likely to receive justice.<sup>6</sup>**



# GBV – PREVALENCE, DEFINITIONS, CONSEQUENCES AND RESPONSES

## ESTIMATES OF GBV PREVALENCE

GBV is among the world's most common and severe human rights, development and public health concerns. The World Health Organization (WHO) estimates that nearly one in three women (30 per cent) globally face physical and/ or sexual intimate partner violence (IPV) or non-partner sexual violence in their lifetime. Thirty-eight per cent of murders of women are committed by intimate partners and 6 per cent of women report to having been sexually assaulted by someone other than their partner. Intimate partner and sexual violence are mostly committed by men against women.<sup>7</sup> Seventy per cent of women experience GBV in humanitarian or crisis contexts.<sup>8</sup> COVID 19-related lockdowns and its social and economic impacts have increased the risk of violence from abusive partners.<sup>9</sup>

### Box 1: Definitions of GBV used in this paper

The prohibition of GBV against women is an integral and core element of international women's rights frameworks. In addition, most governments around the world have adopted measures to address the problem. This means that there is a vast body of national laws, regional and international treaties that define GBV in its many forms.<sup>10</sup> The definition of GBV against women is in constant evolution, as normative frameworks are responding to newly emerging forms and contexts.

**GBV against women**<sup>11</sup> refers to “*violence that is directed against a woman because she is a woman or that affects women disproportionately*”, including acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Violence against women<sup>12</sup> can take place:

- Within the family, including domestic violence, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation/cutting and other traditional practices that are harmful to women.
- Within the community, including rape and sexual abuse; sexual harassment and intimidation at workplaces, educational institutions, public physical and virtual spaces; trafficking in women; and forced prostitution.
- When condoned by the State including physical, sexual and psychological violence.
- When it is economic in nature including acts such as denial of funds, refusal to contribute financially, denial of food and basic needs and controlling access to healthcare, employment, etc.
- When there are violations of rights of women in situations such as armed conflict, including systematic rape, sexual slavery and forced pregnancy, forced sterilization, forced abortions or coerced or forced use of contraceptives, pre-natal sex selection and female infanticide and targeting of women facing intersectional discrimination.

GBV may affect some women to different degrees, or in different ways, as it inextricably intersects with other factors that affect their lives, including “women’s ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability, property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, and being in prostitution, as well as trafficking in women, situations of armed conflict, geographical remoteness and the stigmatization of women who fight for their rights, including human rights defenders”.<sup>13</sup> Thus, the term “women” must be understood to encompass women in all their diversity, rather than as a monolithic category.

**Femicide** has gained legal recognition in many jurisdictions in Latin America and beyond to refer to the gender-related killing of women, so as to distinguish them from the gender-neutral concept of homicide. MESECVI, the monitoring body of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará) defines femicide as “the violent killing of women because of gender, whether it occurs within the family, domestic unit or any interpersonal relationship, within the community, by any individual, or when committed or tolerated by the State or its agents, either by act or omission”.<sup>14</sup>

**‘Honour’ killings** are “the murder of a woman by a close family member or partner as a result of (suspected or alleged) shame being brought on a family by the action (a suspicion or allegation thereof) of the woman.”<sup>15</sup>

**Intimate partner violence** “refers to behaviour within an intimate relationship that causes physical, sexual or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviours. This definition covers violence by both current and former spouses and partners.”<sup>16</sup>

**Non-partner sexual violence, including rape** is “the experience of being forced, coerced or threatened to perform any unwanted sexual act, including rape, attempted rape, unwanted sexual touching or non-contact forms of sexual violence by someone other than an intimate partner.”<sup>17</sup>

**Conflict-related sexual violence (CRSV)** refers to “rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. That link may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group, which includes terrorist entities; the profile of the victim, who is frequently an actual or perceived member of a political, ethnic or religious minority group or targeted on the basis of actual or perceived sexual orientation or gender identity; the climate of impunity, which is generally associated with State collapse, cross-border consequences such as displacement or trafficking, and/or violations of a ceasefire agreement. The term also encompasses trafficking in persons for the purpose of sexual violence or exploitation, when committed in situations of conflict.”<sup>18</sup>

**Child sexual abuse** is “the involvement of a child in sexual activity that he or she does not understand, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society.”<sup>19</sup>

**Child marriage** refers to “any formal marriage or informal union between a child under the age of 18 and an adult or another child.”<sup>20</sup>

**Sorcery accusation related violence (SARV)** “means violence that is directed at people who have been accused of practicing sorcery.”<sup>21</sup>

**Organized crime related violence** refers to violence associated with organized crimes<sup>22</sup> including terrorism, drug trafficking, piracy, trafficking and transnational organized crime.

**Trafficking in persons (trafficking)** means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>23</sup>

**Digital forms of violence against women** “encompass a wide range of acts online or through technology that are part of the continuum of violence that women and girls experience for reasons related to their gender. Violence against women in its digital dimension encompasses both online aspects (activities performed and data available on the internet, including internet intermediaries on the surface web as well as the dark web) and technology-facilitated (activities carried out with the use of technology and communication equipment, including hardware and software) harmful behaviour perpetrated against women and girls.”<sup>24</sup>



**Gender-based political violence is understood** “as any action, conduct or omission, carried out directly or through third parties that, based on gender, causes harm or suffering to a woman or to various women, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of their political rights. Violence against women in the political life may include, but is not limited to, physical, sexual, psychological, moral, economic or symbolic violence.”<sup>25</sup> Gender-based political violence may be aimed at women human rights defenders, politicians, journalists, government and justice personnel and others due to their participation in political action, including mainstream party politics, advocacy, research, campaigns and other actions to hold State and non-State actors accountable to human rights guarantees enshrined in international, regional and national laws.

## **IMPACT AND COSTS RELATED TO GBV**

**GBV is a human rights violation by itself; it also curtails the exercise by women of their other human rights.** It has adverse impacts not only on individual women but also on their children, families and communities.

**GBV has serious short- and long-term consequences on women’s physical, sexual and reproductive and mental health, as well as on their personal and social well-being.** Health consequences of GBV include injuries, untimed or unwanted pregnancy, sexually transmitted infections including HIV, and other infections. Mental health impacts include post-traumatic stress disorders (PTSD), depression, anxiety, substance misuse, self-harm and suicidal behaviour, and sleep disturbances. Additionally, GBV survivors may face social stigma and rejection from their families and communities.<sup>26</sup>

In addition to health impacts, **GBV significantly impedes women’s economic empowerment due to reduced productivity related to physical, mental and social impairments, compromised agency to make choices, and fewer career opportunities.**<sup>27</sup> GBV therefore

results in women suffering isolation, loss of wages and being inadequately represented in the workforce and excluded from public life. This perpetuates women’s subordinated position vis-à-vis men. There can also be intergenerational impacts, as children exposed to violence within the home may suffer a range of behavioural and emotional disturbances, which is often associated with perpetrating or experiencing violence later in life. IPV has also been associated with higher rates of infant and child mortality and morbidity.

Finally, **GBV results in significant social and economic costs.** In 2021, the European Institute for Gender Equality estimated that the cost of GBV across the European Union is €366 billion a year. Violence against women makes up 79 per cent of this cost, amounting to €289 billion. A breakdown of this figure shows the biggest cost is due to physical and emotional impact (56 per cent), followed by criminal justice services (21 per cent) and lost economic output (14 per cent). Other costs include civil and justice services (e.g., for divorce and child custody proceedings), housing aid and child protection.<sup>28</sup> Despite the high costs associated with GBV, funding available to prevent and respond to GBV and

promote gender equality remains grossly inadequate.<sup>29</sup> The Global Humanitarian Overview 2021 estimates requirements to prevent, mitigate and respond to GBV in 2021 amount to \$696 million. However, at the end of July 2021, only 12 per cent (\$83 million) had been pledged towards GBV-related programming and action.<sup>30</sup> The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimates that the 2022 requirements stand at \$596 million, but as of April 2022, only 2.6 per cent had been funded.<sup>31</sup>

## WHAT DOES ACCESS TO JUSTICE FOR GBV SURVIVORS MEAN?

At a minimum, access to justice for GBV survivors means adoption and implementation of a range of measures including enhancing domestic laws to ensure that acts of violence against women are recognized as crimes; ensuring appropriate procedures for investigations and prosecutions; and ensuring access to effective remedies and reparation.<sup>32</sup> The obligation to protect women from GBV extends to acts perpetrated not only by States but also non-State actors. International human rights law provides that States should “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”,<sup>33</sup> and in particular to “exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence [against women] that are perpetrated by non-State actors”.<sup>34</sup>

However, a legal response alone is inadequate to meet the complex and multi-faceted needs of GBV survivors. Women’s idea of justice may include

broader aspirations such as the ability to seek safety through protection orders or a life free of violence through a divorce, equal property rights, access to coordinated and good quality support services such as legal aid, shelter, economic empowerment and financial support, as well as accompaniment and support to navigate complex justice processes. Justice processes should also aim to empower women, guard against secondary victimization and enable women’s meaningful participation to ensure that their short- and long-term justice needs are met.<sup>35</sup>

Overall, a strategic, comprehensive and long-lasting approach to justice for GBV survivors must be:

- Centred on the needs and rights of survivors.
- Focused on strengthening synergies between justice actors and essential support service mechanisms to provide comprehensive responses to GBV survivors.
- Embedded within broader goals of achieving gender equality and building a culture that accords full respect to women’s inalienable and indivisible human rights.
- Guided by the principle of non-discrimination on the basis of sex/ gender and often interrelated factors, such as ethnicity/race, poverty, being lesbian, bisexual, transgender or intersex.<sup>36</sup>

Key entry points for programming on women’s access to justice are presented in the table on the following page.

## Box 2: Elements of a holistic approach to ensuring women's access to justice<sup>37</sup>

### **An enabling environment for women's access to justice**

International standards are domesticated and implemented, constitutions and laws reflect international standards, and all discriminatory elements are repealed. Policies and budgets are designed to implement laws and policies.

Customary and informal justice systems are connected with formal justice systems and strengthened to facilitate justice outcomes for GBV survivors.

Collaboration between State actors and civil society organizations is enhanced, including community-based organizations and women's organizations/networks to establish an enabling environment.

### **Effective, accountable and gender-responsive justice institutions**

CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) Committee General Recommendation 33 principles are upheld – justiciability, availability, accessibility, good quality, provision of remedies and accountability.

Women's representation in institutions and decision-making processes is ensured.

Multilevel and multisectoral responses to meet the needs of GBV survivors are facilitated.

### **Empowering women and preventing GBV**

Women are aware of their rights and supported in realizing their rights.

Measures are taken to change patriarchal social norms to support women's empowerment.

Traditional and religious institutions, justice and service delivery actors, and policymakers are sensitized and respect gender equality.

## WHAT DOES IT MEAN TO BE SURVIVOR-CENTRED?

General Recommendation 35 of the CEDAW Committee highlights that all measures to address GBV must be implemented with “*an approach centred around the victim/survivor, acknowledging women as right holders and promoting their agency and autonomy, including the evolving capacity of girls, from childhood to adolescence. In addition, the measures should be designed and implemented with the participation of women, taking into account the particular situation of women affected by intersecting forms of discrimination.*”<sup>38</sup>

A survivor-centred approach to justice is necessarily multi-faceted and subjective. In addition to centring on GBV survivors, key aspects of a survivor-centred approach to justice include:<sup>39</sup>

- **Prioritizing women’s safety and security and guarding against backlash.** Women and girls who are survivors of GBV face a multitude of risks to their personal safety and that of their children or other family and community members if they decide to seek justice for the violations they have suffered. Those who support GBV survivors are also at risk. This means that justice processes need to place women’s and their children’s need for safety at the centre of all decisions. In complex situations, women often lack access to basic services for their safety, protection and recovery, such as emergency helplines, safe accommodation, shelter and psycho-social counselling.<sup>40</sup> Therefore, entry points for engagements in complex situations should be informed by risk assessments, such as “*safety audits*”<sup>41</sup>

to mitigate unintended negative consequences and ensure that the safety of women is prioritized.

- **Collaborating with and supporting women’s organizations,** especially local ones, who are at the forefront of responding to GBV. Local organizations play an essential role in case management, supporting access to justice for GBV survivors and providing specialized services. Research has shown that a critical factor accounting for legal reforms and progressive policy changes has been the presence of feminist movements in domestic contexts.<sup>42</sup>
- **Supporting women’s mobilization against GBV.** Autonomous feminist movements have led advocacy campaigns and undertaken strategic litigation that have influenced legal developments at the national, regional and international levels.<sup>43</sup> They have been effective in domesticating international and regional standards both in the framing and implementation of laws. Support to women’s organizations and feminist movements working to end GBV cannot be separated from efforts to create civil and political spaces for gender activism and mobilization against GBV.
- **Building the GBV evidence base** by rigorously collecting data on GBV centred on women and their experience of GBV and accessing justice. This includes collection of data disaggregated along key dimensions (e.g. sex, age) and listening to women in all their diversity tell their own stories and experiences as well as increasing efforts to decolonize data collection by privileging knowledge from local practitioners, building local capacity of researchers and amplifying

voices of survivors.<sup>44</sup> Advocacy, legal reform and justice programming should be informed and based on accurate data.

- **Avoiding language that perpetuates the stigma associated with GBV.**

The fear of stigma discourages GBV survivors from reporting instances of GBV. Hence, capacity of local actors, first responders and justice and support service providers must be built to use appropriate terminology that does not either blame survivors or perpetuate stereotypes and norms related to so-called “honour”.<sup>45</sup>

- **Accommodating and addressing intersecting forms of discrimination and marginalization.** The CEDAW Committee’s General Recommendation 33 recommends that “*all justice systems must be adapted to the needs*

*of women, including those subjected to intersectional or compounded discrimination*”.<sup>46</sup> Understanding how violence is perpetrated and experienced using an intersectional approach can help tailor context-specific responses/initiatives that can reach the most vulnerable populations.

## COMPLEX SETTINGS: SELECTED SITUATIONS

The prevalence and risks of GBV increase in contexts of crisis and emergencies, such as health emergencies, armed conflicts, climate disasters and organized crime.

### Box 3: GBV in complex settings - selected situations

The term “*complex situations*” is used throughout this report to describe complicated contemporary contexts in which the humanitarian-development-peace nexus (or “*triple nexus*”) is relevant. The nexus framework is an important means of recognizing and responding to the need for strengthening the resilience of people and communities before, during and after crises, with significant implications for how aid is coordinated, financed and implemented. Achieving coherence between efforts to deliver humanitarian assistance, foster sustainable development and build peace is prioritized by, for example, the OECD Development Assistance Committee,<sup>47</sup> and most key donors and United Nations agencies are supportive of the nexus framework.<sup>48</sup> In the complex situations covered by this report, risks of GBV against women arise and are affected by diverse dynamics including protracted armed conflict, long-term displacement, and the adverse effects of climate change, among others.

**Global pandemics (COVID-19):** The COVID-19 pandemic exacerbated risks of GBV globally with victim/survivors confined with abusers consequent to the application of quarantine measures. Risks were also exacerbated due to financial stress, stress related to school closures and increased care burdens as well as increased alcohol consumption and drug abuse. The United Nations Population Fund (UNFPA) predicted that 15 million additional cases of GBV occurred for every three months of the COVID-related lockdown.<sup>49</sup> COVID-19 also severely disrupted delivery of health, emergency and legal/justice services.

**Armed conflicts:** These have disproportionate impacts on women and girls, who face heightened risks due to displacement, entrenched structural bias, increased caregiving roles and the breakdown of normal structures and support. The prevalence of GBV in crisis settings is estimated to be double that faced in non-conflict settings. Non-partner sexual violence is extraordinarily high compared to non-conflict contexts. Emerging research shows that IPV against women and girls is more prevalent than non-partner sexual violence during conflicts and humanitarian crises. Though less is known about rates of other forms of GBV in these settings, such as sexual exploitation and abuse, forced, early and child marriage, research has shown increased risks of such forms of abuse in conflict and humanitarian settings.<sup>50</sup>



**Climate disasters:** Since 1970 the number of people exposed to floods and tropical cyclones have doubled and women and children face an overwhelming burden during and after the crises. The impact of climate change on women and girls is multifaceted and significant, with GBV among the key challenges affecting women and girls disproportionately.<sup>51</sup> While global climate change exacerbates disaster risks, it also increases the likelihood of rape, sexual exploitation and risky behaviour of women. As with pandemics, there are severe disruptions in normal protection systems, justice and service delivery in contexts of climate and natural disasters.<sup>52</sup>

**Organized crime:** Although there is limited research in this regard, organized crime and GBV are linked in multiple and complex ways. Evidence suggests that women may be engaged in organized crime to access resources to escape abusive relationships, and that women in organized crime or related to or associated with networks and gangs face violence, including femicide, sexual violence and IPV from other gang members.<sup>53</sup> Organized crimes may involve serious forms of GBV such as trafficking for forced sexual exploitation, online sexual abuse, violence associated with illicit firearms, forced labour and modern slavery. Women may also play various roles in organized crime activities related to GBV.<sup>54</sup>

Pre-existing gender inequalities and challenges to accessing justice are heightened in complex settings due to weakened or absent rule of law, breakdown of justice systems and disrupted service delivery, and the volatile and fluid contexts and governance structures. Other factors that impede women's access to justice in complex contexts include inadequate and discriminatory legal frameworks and procedures; inadequate availability and resourcing of formal justice institutions and services; discriminatory practices and accountability within customary and informal justice systems that are most accessible for women; entrenched patriarchal social norms, practices and attitudes; lack of survivors' awareness of rights and availability of support services; increased financial constraints in accessing justice; and heightened safety risks.<sup>55</sup> These challenges are detailed in the following chapters that present findings from the different country contexts.

The very nature of complex settings means that crises often overlap, e.g., the presence of organized crime in conflict or disaster settings happening at the same time as a health pandemic. Furthermore, addressing GBV in complex settings requires going beyond a narrow lens that looks only at GBV-focused mechanisms, and rather inquiring into processes that seek to prevent or address these crisis situations. For example, initiatives for GBV prevention and response should be part of state and peace building processes, disaster or health emergency responses. This will ensure that survivors receive protection, support and assistance at all stages of crisis, post crisis and recovery.

Crises and post-conflict situations can open opportunities for reform. A gender-responsive transition process should include measures to address impunity for GBV, especially conflict-related GBV, encourage women's participation, particularly of GBV survivors, and

oversight. Such a process would also contribute to lasting peace. Research has shown that involvement of and advocacy by women engaged in peace processes positively influenced agreements to address GBV and prosecution of GBV-related crimes.<sup>56</sup>

## THE PAPER: CONTENT, STRUCTURE AND METHODOLOGY

Eliminating GBV, upholding women's human rights and facilitating access to justice for GBV survivors are core obligations of States and international actors. They, particularly under CEDAW and relevant regional treaties, apply under all circumstances, including in complex settings. However, measures or programmes to ensure access to justice for GBV survivors need to be tailored to women's specific needs and vulnerabilities and must be relevant to contextual complexities. This highlights a key learning from decades of implementing gender justice and rule of law initiatives – that there is no 'one-size-fits-all' approach.<sup>57</sup>

On this note, this paper provides a deeper understanding of the specific challenges women face in accessing justice for GBV in complex settings and highlights tailored approaches for better protection, prevention and response, especially by justice systems.

The content in this paper is based on a literature review, qualitative interviews and focus group discussions in six countries [Afghanistan, Honduras, Papua New Guinea (PNG), the Philippines, South Sudan and Tunisia] experiencing complex challenges (such as health emergencies, conflicts, organized crime and climate disasters), and the inputs

of experts. The situations included in this study are complex not only because of the prevailing social and political environment but also because of the complexity of justice systems in each of the countries examined. This paper also examines other crucial factors overlaying such complexities such as the role of non-State, private or religious actors, as well as customary and informal justice systems, in the way women and girls experience GBV and consequently their justice seeking pathways.

By focusing on complex settings, this paper seeks to contribute to research and understanding of what interventions work to effectively respond to GBV, uphold women's rights, and facilitate access to justice for GBV survivors. This is particularly critical as despite numerous initiatives to prevent and respond to GBV in the past 25 years, relatively few have been rigorously evaluated and there are significant evidence gaps on the effectiveness of programming approaches. This is partly due to numerous methodological challenges associated with data collection, particularly in conflict and fragile settings.<sup>58</sup> Given the prevalence and impact of GBV on women and girls, there is a need to build the evidence base to effectively address it through inclusive, gender sensitive and locally relevant interventions that are not only compliant with human rights standards, but are tailored to complex situations.

The paper is structured as follows:

- **Chapter 1:** Access to justice for GBV survivors in complex settings: key concepts and framework of analysis
- **Chapter 2:** International standards on ensuring justice for GBV survivors

- **Chapter 3:** Justice mechanisms addressing GBV across the six focus countries
- **Chapter 4:** Legal frameworks to address GBV
- **Chapter 5:** Constraints and opportunities for women's access to justice in complex settings
- **Chapter 6:** Services for GBV survivors in complex settings
- **Chapter 7:** Primary prevention of GBV in complex settings
- **Chapter 8:** Key findings and recommendations for advancing women's access to justice in complex settings

The paper is aimed at informing the work of policymakers, development practitioners and justice actors, including lawyers, judges, court administrators, as well as those training judicial and legal professionals. It is also targeted for use by those working with justice institutions and processes such as women's organizations, national human rights organizations, humanitarian actors, researchers, activists and others engaged in justice sector reform.

The research set out to meet the following three research objectives:

- Identify the main **challenges** for justice mechanisms in addressing GBV in complex situations.
- Explore **approaches** that work or show promise for improving access to justice for survivors of GBV in complex situations.
- Highlight justice **innovations** that have been shown to increase the effectiveness of the justice system in responding to GBV in complex situations.

To this end, a mix of methodological approaches was adopted through a desk review of key documents, primary qualitative data collection, and an expert group meeting to review emerging findings and recommendations. All primary data collection was conducted before 15 August 2021. As such, the main findings of the report were produced before the Taliban takeover in Afghanistan, and before the adoption of a new constitution in Tunisia, following a referendum on 25 July 2022.

#### Box 4: Summary of research methods



##### **Desk review**

International legal standards, reports, overview of survivor-centred practices in rule of law and justice programming.



##### **Country context studies**

National and international researchers provided an overview of the legal, policy and institutional context related to GBV in each of the six countries.



##### **51 key informant interviews**

In-depth, semi-structured interviews with 57 interviewees across the six study countries (in some case, two people from the same organization or institution were interviewed at the same time). A diverse range of stakeholders were interviewed from government (13), civil society (21), academia (9) and multilateral organizations (8). In total, 50 women and 7 men were interviewed.



##### **6 focus group discussions (FGDs)**

FGDs were conducted with 35 participants, which included members of the judiciary (4), lawyers (13), representatives from women's organizations (11), forensic specialists (2), international humanitarian practitioners (3) an academic (1) and a gender specialist (1). FGDs were conducted in Afghanistan, Honduras, South Sudan and Tunisia.



##### **Expert group meeting**

An expert group meeting with 30 participants was convened on 22 July 2021.

The desk review focused both on documents specific to the six focus countries (Afghanistan, Honduras, PNG, the Philippines, South Sudan and Tunisia), and others that were global in scope, reflecting justice trends and promising access to justice approaches outside of the study countries. Key stakeholders were identified across each of the six study countries for key informant interviews and focus group

discussions among justice and legal professionals, government officials, GBV service providers, multilateral agencies, donors, non-governmental organizations, civil society organizations (CSOs), women's rights activists and researchers. Semi-structured interview questionnaires were given to key informants in 51 interviews, and 6 focus group discussions were conducted with a total of 35 participants across the

six study countries. Participatory data collection tools such as free listing and open-ended stories were prioritized in the FGDs. Informed consent forms were distributed and discussed with all participants in the interviews and FGDs. Towards completion of qualitative data collection, the research team presented emerging findings and recommendations to a global group of experts for their review.<sup>59</sup>

**Sample selection:** The countries of focus in the research – Afghanistan, Honduras, South Sudan, the Philippines, Tunisia and PNG – were selected to include a range of fragile and complex situations such as post conflict, organized crime, plural legal systems, aftermath of climate-related natural disasters, and health emergencies. The aim was to select a set of countries that are as diverse as possible, approximating a “*most different systems*” design.<sup>60</sup>

Thus, the following criteria were applied in country selection:

- Lends itself to illustrating either promising practices or particular challenges on one or more analytical dimensions – legal frameworks, opportunities for women’s access to justice, provision of services and primary prevention.
- Covers a range of complex situations.
- Provides geographical diversity, with at least one example each from Africa, Asia and the Pacific, Central and South America, and the Middle East and North Africa (MENA) region.
- Adds to existing knowledge.
- Ensures access and feasibility of the research.

For the purpose of the study, a case was understood as a particular intervention or approach, whether sectoral (limited to the justice sector) or inter-sectoral, that shows promise in supporting access to justice for GBV survivors in complex situations in one country (e.g., the aftermath of Typhoon Haiyan in the Philippines or the COVID-19 pandemic in Tunisia).

Although an effort was made to achieve a diversity of countries, the ability to draw general conclusions was impacted by the lack of a representative set of cases, volatile and fast changing contexts – as was experienced in Afghanistan – and access to and availability of data. All data was collected during the COVID-19 pandemic, and the lockdowns imposed in several countries, such as the Philippines, made it impossible for the researchers to travel to gather community-level data. These limitations were mitigated through the adoption of the aforementioned data collection and validation methods.





## **CHAPTER 2: INTERNATIONAL STANDARDS ON ENSURING JUSTICE FOR GBV SURVIVORS**

Image Credit: © IDLO



# CHAPTER 2: INTERNATIONAL STANDARDS ON ENSURING JUSTICE FOR GBV SURVIVORS

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Situations of crisis often have different and complex legal “*regimes*” concurrently applying at the same time. In times of conflict, for example, international human rights law operates alongside international humanitarian law, refugee law, international criminal law and the imperatives of the women, peace and security agenda.<sup>61</sup> This is reaffirmed by the CEDAW Committee in its General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations where it urges states to “*give due consideration to the complementary protections for women and girls stemming from international humanitarian, refugee and criminal law, when implementing their obligations under the [Convention for the Elimination of All Forms of Discrimination against Women]*”.<sup>62</sup>

## INTERNATIONAL HUMAN RIGHTS LAW

Women’s right to access to justice in response to GBV is a principle of international human rights law, which serves as a foundation for national laws and policies. The prohibition of GBV is based on the right to life and the right not to be subjected to torture and ill-treatment, therefore requiring the highest priority to be given to ensuring its enforcement. The prohibition of GBV in international human rights law is also guided by the principle of non-

discrimination and the need to protect the rights to personal integrity and to a dignified life.

## UNDERSTANDING GBV AS A VIOLATION OF HUMAN RIGHTS AND A FORM OF DISCRIMINATION AGAINST WOMEN

While the prohibition of violence against women was not an integral part of recognized women’s rights at the 1979 adoption of CEDAW, today it is a core treaty obligation, with most governments around the world adopting measures to address the problem. This change has taken place due to decades of transnational women’s mobilization. Placing violence against women on the global human rights agenda is indeed one of the most impressive successes of the international women’s rights movement over the last half a century.<sup>63</sup>

Within the United Nations Decade for Women (1975–1985), a process of “*transnational consensus building*” had been unfolding around the sweeping agreement that “*gender equality is the optimum approach to protecting women from violence*”.<sup>64</sup> In that important period for women’s rights, CEDAW was adopted (1979), informed by ideas about women’s status that had been developed earlier, in the 1950s, 1960s and 1970s.<sup>65</sup> Despite the fact that CEDAW is a women’s human rights treaty promoting gender equality

and non-discrimination, it does not refer to violence against women explicitly. By the end of the United Nations Decade for Women, however, a movement to name violence against women had gained momentum around the world, starting from the Global South. The Nairobi Forward-looking Strategies (1985), which assessed progress made in the Decade and set out the directions ahead, made extensive references to violence against women.<sup>66</sup>

In the 1990s, the notion of violence against women as a form of subordination and discrimination found powerful expression in a body of “*soft law*” epitomized by the 1992 General Recommendation 19 of the CEDAW Committee and the 1993 United Nations General Assembly Declaration on the Elimination of Violence against Women. General Recommendation 19 defined GBV as a form of discrimination against women and triggered the application of a resolutely human rights connotation to violence against women in international documents. According to this General Recommendation, “*GBV is violence committed against a woman because she is a woman or that affects women disproportionately*”.<sup>67</sup>

General Recommendation 19 of the CEDAW Committee was followed by the United Nations General Assembly Declaration on the Elimination of Violence against Women in 1993, which at the time was considered “*one of the most significant efforts to combat violence against women*”.<sup>68</sup> While CEDAW General Recommendation 19 and the United Nations General Assembly Declaration were both legally non-binding documents, the former carried significant legitimacy as authoritative interpretation of CEDAW, and the latter as a policy

statement that expressed the collective agreement of the Member States of the United Nations. The language in these two documents significantly informed the formulation of the theories, objectives and concrete measures that United Nations Member States and international human rights bodies integrated in their agenda, also in response to growing advocacy from the global women’s movement.<sup>69</sup>

The new understanding of violence against women as a human rights violation was crystallized by the appointment by the United Nations Human Rights Council (formerly the Human Rights Commission) of a Special Rapporteur on violence against women, its causes and consequences in its resolution 1994/45.

The 1990s and 2000s saw a dramatic expansion of the movement against GBV, through global conferences, United Nations declarations, and international non-governmental organization (NGO) activism. Significant distance was covered by defining violence against women as a human rights violation. Yet, the new understanding was enshrined in a body of “*soft law*” mainly originating from the reinterpretation of CEDAW through General Recommendation 19. The absence of an explicit treaty right against violence against women is considered by some as an important gap in international human rights treaty law.<sup>70</sup> This gap was subsequently filled by several regional treaties.

## STANDARDS ON STATE ACCOUNTABILITY TO ENSURE GBV SURVIVORS' ACCESS TO JUSTICE IN COMPLEX SITUATIONS

The detailed constellation of the specific measures required to ensure access to justice for women survivors of GBV has been elaborated by the CEDAW Committee, particularly in General Recommendations 19 (1992) on violence against women; General Recommendation 30 on women's rights in conflict and post-conflict situations; General Recommendation 33 (2015) on access to justice; and General Recommendation 35 (2017), which updates General Recommendation 19. The United Nations Special Procedures, notably the United Nations Special Rapporteur on violence against women, its causes and consequences, the United Nations Special Rapporteurs on torture and extra-judicial executions, and the United Nations Working Group on discrimination against women in law and practice, have also detailed how justice should be administered.

The CEDAW Committee, through its General Recommendations 19 and 35, recognizes GBV as a form of discrimination against women under CEDAW, and requires States parties to prevent, investigate, prosecute and provide remedy for all such acts, highlighting that access to justice is necessary to vindicate these rights. The CEDAW Committee in General Recommendation 33 has further emphasized the importance of access to justice in general, for ensuring women's human rights, as an aspect of the rule of law and good governance. It has reaffirmed in General Recommendation

30 that under all circumstances – even fragile or complex contexts – States are still bound by the basic obligation to ensure justice for women for crimes of violence committed against them.

General Recommendation 35 of CEDAW is particularly important because it consolidates not only the Committee's own monitoring work and jurisprudence under the Optional Protocol, but also provisions contained in regional treaties, in particular the Istanbul Convention, and judgements of regional human rights courts, in particular the Inter-American Court of Human Rights.

Important elements of access to justice for victims/survivors of GBV under CEDAW General Recommendations 19, 30, 33 and in particular 35<sup>71</sup> are:

- **All forms of GBV against women must be defined as crimes.** General Recommendation 35 encourages States to “*ensure that all forms of GBV against women in all spheres, which amount to a violation of their physical, sexual or psychological integrity, are criminalized*”. As victims and survivors, women and girls are entitled to reparation, in terms of restitution (restoring property lost due to the commission of the crime), rehabilitation (physical, mental and reproductive healthcare required to make a full recovery from the health impacts of the crime), compensation (financial compensation to reflect the pain and suffering experienced), satisfaction (apologies and public recognition of the harm done and the dignity of the survivors) and guarantees of non-repetition.
- **Clear criminal law on rape and sexual violence.** General Recommendation 35 urges States to “*ensure that sexual assault, including rape, is characterized*

*as a crime against the right to personal security and physical, sexual and psychological integrity and that the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances.”<sup>72</sup>*

- **Requirements of effective investigation and prosecution.** At the core of the procedural obligations of States lies the duty of domestic authorities to conduct a thorough and effective investigation capable of leading to the identification and, as appropriate, the punishment of those responsible.<sup>73</sup>
- **Protective measures for women complainants and witnesses to GBV before, during and after legal proceedings.** A survivor-centred approach is particularly critical in the adoption of protective measures, as these need to place the safety and needs of victims and witnesses at their heart. CEDAW General Recommendation 35<sup>74</sup> closely follows the provisions of the Istanbul Convention,<sup>75</sup> and recommends that States parties adopt and implement a range of protective measures, including:
  - » appropriate and accessible protective mechanisms to prevent further or potential violence, such as immediate risk assessment, protection or restraining orders, emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance
  - » access to financial assistance, gratis or low-cost, high-quality legal aid

- » medical, psychosocial and counselling services
  - » timely and comprehensive mental, sexual and reproductive health services that are responsive to trauma, including emergency contraception and post-exposure prophylaxis against HIV
  - » education, affordable housing, land, childcare, training and employment opportunities for women who are victims/survivors and their family members
  - » women’s support services, such as free helplines operating around the clock and sufficient numbers of safe and adequately equipped crisis, support and referral centres and adequate shelters for women, their children and other family members, as required
  - » appropriate multisectoral referral mechanisms to ensure effective access to comprehensive services for survivors of such violence, ensuring the full participation of and cooperation with non-governmental women’s organizations.
- **Transformative remedies to deal with root causes of GBV.** General Recommendation 35 draws on previous jurisprudence, particularly *Gonzalez, Monreal and Monarrez v Mexico* (2009), known as “the Cottonfield case”, in requiring that reparations be transformative, that is, that they address the root causes of the violence, particularly the gendered inequalities that allowed the crime of violence to take place. The Committee recommends that States parties implement the following measures with regard to reparations: “(a) Provide effective reparations to victims/survivors

*of GBV against women, encompassing different measures, such as monetary compensation, the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition; (b) Establish specific funds for reparations or include allocations in the budgets of existing funds, including under transitional justice mechanisms, for reparations to victims of GBV against women. Priority should be given to the agency, wishes, decisions, safety, dignity and integrity of victims/survivors.”<sup>76</sup>*

- **Eradication of gender stereotyping in laws, in the judiciary and in the wider society.** Article 5(a) of CEDAW urges States to eradicate those stereotypes, to “*take all appropriate measures to modify social and cultural patterns of conduct, with a view to eliminating prejudices and customary and all other practices that are based on the idea of the inferiority or the superiority of either sex.*” Furthermore, General Recommendation 35 identifies gender stereotypes as both a root cause and a consequence of violence against women. It emphasizes the importance of eradicating stereotyping in a variety of contexts including in laws and in the judiciary.<sup>77</sup> In General Recommendation 33, the CEDAW Committee has expounded in detail how all those participating in the justice system, such as judges, adjudicators, investigators and law enforcement officials, must carry out their duties and apply the law without stereotyping.
- **Role of feminist organizations in justice reform.** The CEDAW Committee has emphasised to States that feminist

civil society should have a key role in reflecting on, reviewing and making changes to justice systems so they fully respect the rights of women and girls seeking justice.<sup>78</sup> Women human rights defenders and women CSOs often provide accompaniment and services for GBV survivors, and the families of those women and girls who are subjected to GBV, in seeking justice and reparation. Often these women advocates are GBV survivors themselves, including being targeted for their work by State agents, hostile members of their communities, even their own families.

- **Gender balance in the judiciary.** CEDAW General Recommendation 33 has stressed that the judiciary should have equal numbers of men and women, that States should “*confront and remove barriers to women’s participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers in justice-related services.*”<sup>79</sup>

## REGIONAL HUMAN RIGHTS TREATIES TO PREVENT AND COMBAT VIOLENCE AGAINST WOMEN

The first regional treaty on violence against women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994, known as “*Belém do Pará*”, recognized violence against women as a human rights violation and established mechanisms to eliminate violence in both the public and private spheres. In 2004, a monitoring mechanism for the treaty, MESECVI, was set up consisting of (1) a forum for permanent dialogue and technical





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cooperation between States parties; and (2) a Committee of Experts to assess progress and highlight challenges.

The second regional treaty, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in 2003 by the African Union, linked the eradication of violence against women to the advancement of women in all aspects of life by introducing a prohibition on violence against women.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the third regional treaty, moved the international legal framework a step further by establishing a legally binding definition of violence against women as "*a violation of human rights and a form of discrimination against women*" (article 3). The Istanbul Convention also established a monitoring mechanism, consisting of an independent expert body, known as the Group of Experts on Action against Violence

against Women and Domestic Violence (GREVIO), and a political body, the Committee of Parties.

Taken together, CEDAW and the three regional treaties make up a global human rights legal framework to strategically and effectively address all forms of violence against women.<sup>80</sup>

These regional human rights treaties to prevent and combat violence against women have also formulated detailed provisions on ensuring victims' access to justice. The Istanbul Convention is the most specific among the regional treaties on this aspect.



**Box 5:** The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

The Istanbul Convention includes numerous provisions aimed at facilitating access to justice for victims of GBV, in particular by requiring States parties to:

- Ensure that measures to protect the rights of victims of violence are implemented without discrimination (article 4)
- Exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence (article 5)
- Take measures to promote changes in social and cultural patterns to eradicate gender stereotypes (article 12)
- Provide adequate training of professionals working with victims of violence on their needs and rights and on equality (article 15)
- Provide adequate legal information (article 19)
- Encourage reporting of acts of violence (article 27)
- Provide victims with adequate civil remedies (article 29), and compensation (article 30)
- Criminalize or otherwise sanction a broad range of forms of violence against women (articles 33–40)
- Ensure that investigations and judicial proceedings are carried out without undue delay (article 49) and that prosecutors can initiate and continue proceedings, even if the victim withdraws the complaint (article 55)
- Ensure that evidence relating to the sexual history and conduct of the victim is permitted only when relevant and necessary (article 54)
- Ensure that mandatory alternative dispute resolution processes or sentencing, including mediation and conciliation, are prohibited (article 48)
- Ensure the protection of victims at all stages of investigations and judicial proceedings (article 56)
- Provide victims with access to legal assistance and to free legal aid (article 57)

Thus, the standards of the Istanbul Convention constitute a core element of ensuring equal access of women to justice for GBV.

## INTERNATIONAL HUMANITARIAN AND CRIMINAL LAW RELEVANT FOR ADDRESSING GBV IN CONFLICT AND OTHER COMPLEX EMERGENCIES

### INTERNATIONAL HUMANITARIAN LAW

A historical analysis of international humanitarian law shows that sexual violence was always considered as collateral damage of conflicts, and women have not figured prominently in either the laws restraining the conduct of warfare or in war crimes tribunals.<sup>81</sup> In the aftermath of World War II, rape was included in the Tokyo Tribunal's indictments, but an independent category of crimes of a sexual nature was omitted from the Tokyo Charter.<sup>82</sup>

The post-war codification of international humanitarian law culminated in the signing of the four Geneva Conventions of 1949. The Fourth Geneva Convention is the first international instrument to protect women against "*rape, enforced prostitution, or any form of indecent assault*" [article 27(2)]. This Convention is exclusively on international armed conflict and does not apply to armed conflicts not having an international character. The international humanitarian law applied to those is the common article 3 to the First, Second, Third and Fourth Geneva Conventions of 1949. Importantly, this article regulates conflict of a non-international character and prohibits "*outrages upon personal dignity, in particular humiliating and degrading treatment*" [article 3 (1c)].

Protocol I (1977) additional to the Geneva Conventions, and applicable to armed conflicts with an international character,

in article 76 (1) affords protection to women from "*rape, forced prostitution and any other form of assault*", and in article 77 (1) to children, including the girl child, against "*indecent assault*". Additional Protocol II (1977) also prohibits rape in situations of non-international armed conflict in its article 4 (1e). Thus, the Geneva Conventions 1949 and the Additional Protocols 1977 contributed to the development of international humanitarian law protecting women against sexual violence in times of war. In December 1992, post the ratification of the Additional Protocols to the Geneva Conventions, the International Committee of the Red Cross issued an aide-memoire to clarify the prohibition of rape under the Geneva Conventions of 1949. It stated, in particular, that the grave breaches enumerated in article 147 of the Fourth Geneva Convention, especially that of wilfully causing great suffering or serious injury to body or health, "*obviously covers not only rape, but also any other attack on a woman's dignity*".<sup>83</sup>

### INTERNATIONAL CRIMINAL LAW

Parallel to the post World War II developments in international humanitarian law, rape also incrementally gained recognition as an international crime, including as a crime of genocide and crime against humanity.

In *Jean-Paul Akayesu* (1998), the International Criminal Tribunal for Rwanda delivered the first conviction of sexual violence and rape as crimes of genocide. The Tribunal found Akayesu, formerly serving as mayor of Taba, Rwanda, guilty on many counts. In particular, with regard to his crimes of GBV, the Tribunal found him responsible for: rape as a crime against humanity, other inhumane acts as a crime against

humanity, and rape as a crime of genocide. The work of the two ad hoc tribunals for Rwanda (International Criminal Tribunal for Rwanda) and ex-Yugoslavia (International Criminal Tribunal for Yugoslavia) contributed to the realization that gender-based crimes during conflict are an exacerbated form of the discrimination women and girls suffer in times of peace, an insight that has since been the cornerstone of all the strategies related to both conflict-related violence against women and “*peacetime*” GBV.

The Rome Statute of the International Criminal Court of 1998 is the first international legal instrument to expressly include various forms of **sexual and gender-based crimes** — including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence — as underlying acts of both crimes against humanity and war crimes when committed in international and non-international armed conflicts.

- Article 7 (1) of the Rome Statute lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity.
- Article 8 (2)(b)(xxii) lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence as serious violations of the laws and customs applicable in international armed conflict.
- Article 8 (e)(vi) lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence as a serious violation of article 3 common to the four Geneva Conventions

applicable to armed conflict not of an international character.

While the International Criminal Court struggled to advance international jurisprudence on gender-based crimes in its first decade of practice, it has made significant progress since 2014.<sup>84</sup> That year, the Office of the Prosecutor adopted its “*Policy Paper on Sexual and Gender-based Crimes*”.<sup>85</sup> Some examples include:

In 2021, in *The Prosecutor v. Bosco Ntaganda*, the International Criminal Court delivered the first final conviction for sexual and gender-based crimes.<sup>86</sup> In 2019, the Trial Chamber convicted Ntaganda of 18 counts of war crimes and crimes against humanity, including rape and sexual slavery committed against child soldiers, as well as both male and female civilians, sentencing him to 30 years’ imprisonment, the heaviest sentence handed down by the court at that date. On 30 March 2021, the Appeals Chamber upheld the conviction and sentence.

Furthermore, *The Prosecutor v. Dominic Ongwen* is the first International Criminal Court case in which the Prosecutor brought the charges of forced marriage as an inhumane act, amounting to crimes against humanity, and it is the first time that the crime of forced pregnancy has been prosecuted by an international court.<sup>87</sup> On 4 February 2021, the Trial Chamber found Ongwen guilty of 61 counts of war crimes and crimes against humanity, including all 19 counts relating to 11 charges of sexual and gender-based crimes.

In *Al-Hassan*, a case arising from the Mali situation, which is currently at the trial stage, the Office of the Prosecutor broke new ground by including as crimes against humanity persecution on gender grounds, alongside charges for several sexual and gender-based crimes.<sup>88</sup>

## **WOMEN, PEACE AND SECURITY AGENDA**

The ground-breaking resolution 1325 adopted by the United Nations Security Council in 2000 emphasized the crucial role women play in the peace process and in addressing the root causes of conflict-related violence against women. Subsequently, United Nations Security Council Resolution 1820 (2008) recognized, for the first time, conflict-related sexual violence as a tactic of warfare and as a serious threat to international peace and security. The resolution calls for an end to widespread conflict-related sexual violence, establishes accountability of all actors to counter impunity for such crimes and calls on the United Nations to develop appropriate mechanisms to provide protection from violence and respond to sexual violence and other forms of violence against civilians. All the subsequent resolutions on women, peace and security,<sup>89</sup> which taken together constitute the Women, Peace and Security Agenda, establish international norms and standards to promote the protection of women during armed conflict and their participation in peace and security decision-making. A 2019 review of the implementation of these resolutions, as it related to the United Nations system, identified three key factors essential for their implementation – (1) the degree to which gender equality, as well as women, peace and security are consistently prioritized and sufficiently resourced; (2) the presence of accountability mechanisms; and (3) the presence and influence of gender expertise at senior levels and across political and technical components, special political missions and other United Nations system entities.<sup>90</sup>

## **UPHOLDING HUMAN RIGHTS STANDARDS TO ADDRESS GBV IN COMPLEX EMERGENCIES**

International criminal law has gained a prominent role in addressing GBV in the past 20 years to the extent that it may give rise to the perception that it is the main international legal answer to GBV. However, the international criminal law regime is inextricably intertwined not only with (the earlier developed) international humanitarian law, but with international human rights law as well. Each regime intervenes at a different stage of a conflict, and one cannot be applied without the other.<sup>91</sup> Indeed, the protection of women and girls does require international humanitarian law during the conflict, international criminal law during the peace transition and international human rights law before and after a conflict. However, the clear delineation between the three disciplines exists only on paper, and when it comes to providing an adequate legal response to GBV, they often overlap.

Importantly, a basic provision of the right to access justice for GBV is that the standards established by CEDAW apply under all circumstances – in conflict, post-conflict and peacetime – and that other international rules, such as international criminal law,<sup>92</sup> international refugee law<sup>93</sup> and international humanitarian law, and the imperatives of the Security Council agenda on women, peace and security, are complementary to the rules of international human rights law.<sup>94</sup>

Given the noted overlap of the different legal regimes applying in complex situations, it is essential that all those operating in fragile situations know that

the basic requirements of international human rights law apply at all times. Difficult situations, such as pandemics, natural disasters or mass migration, do not provide an excuse for perpetrating harm against women and girls.

A survivor-centred approach is the key thread in understanding the international standards on access to justice for GBV, in all circumstances, including fragile situations. The CEDAW Committee has also recognized that in seeking access

to justice, women and girls should be considered not just as victims of crimes, but as participants and co-creators of the institutions tasked with vindicating their rights. States parties to CEDAW are required to: *“Provide effective and timely remedies and ensure that they respond to the different types of violations experienced by women, as well as adequate reparation, and ensure women’s participation in the design of all reparation programs”*, as indicated in General Recommendation 33.<sup>95</sup>

#### **Box 6:** Timeline of international and regional standards on GBV

- 1948: Universal Declaration of Human Rights
- 1949: The Four Geneva Conventions
- 1977: Additional Protocols I and II to the Geneva Conventions
- 1979: United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- 1992: CEDAW Committee General Recommendation 19 on gender-based violence
- 1993: UN General Assembly Declaration on the Elimination of Violence against Women
- 1994: Inter-American convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará)
- 1995: Beijing Platform for Action
- 1998: The Rome Statute of the International Criminal Court, Jean-Paul Akayesu Judgement of the International Criminal Tribunal for Rwanda (ICTR)
- 1999: Optional Protocol to CEDAW
- 2000: UN Security Council Resolution 1325 on Women, Peace and Security
- 2003: Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol)
- 2008: UN Security Council Resolution 1820 on conflict-related sexual violence as a tactic of warfare
- 2009: Landmarkcase on VAW: Gonzalez et al v. Mexico (the Cotton Fields Case)
- 2011: Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)
- 2015: 2030 Agenda for Sustainable Development
- 2017: CEDAW Committee General Recommendation 35 on gender-based violence against women, updating GR19
- 2021: Generation Equality Global Acceleration Plan

## RECENT POLICY FRAMEWORKS ON ACCESS TO JUSTICE AND GBV: SDGs, GENERATION EQUALITY AND OUR COMMON AGENDA

There is a wealth of women's rights standards that guide national and local policies on access to justice and GBV. While GBV and access to justice were missing from the previous Millennium Development Goals (MDGs), the Sustainable Development Goals (SDGs) provide clear direction for addressing GBV and strengthening access to justice. The SDGs include a clear commitment to eliminate the different forms of violence that routinely undermine women's and girls' enjoyment of human rights (Targets 5.2, 5.3, 11.7, 16.1 and 16.2). The 2030 Agenda for Sustainable Development, specifically SDG 5.2, identifies the elimination of GBV in the public and private spheres as critical to achieving gender equality and the empowerment of women, which in turn is essential for sustainable development. Eliminating GBV through policy action is critical for achieving gender equality as well as many of the other commitments reflected in the 2030 Agenda.<sup>96</sup> Eliminating IPV, for example, not only contributes to the promotion of healthy lives (Goal 3) but also supports women's rights to work and income security (Goals 1 and 8). Likewise, the eradication of child, early and forced marriage will not only enhance women's sexual and reproductive health (Goal 3), but also ensure that girls complete primary and secondary education, a precondition for effective learning outcomes (Goal 4). Conversely, addressing many of the targets across the 2030 Agenda will contribute to the elimination of violence against women and girls (VAWG). For

example, the promotion of safe and secure working environments (Target 8.8) and the provision of safe public spaces and transport (Targets 11.2 and 11.7) can reduce sexual harassment, while registering girls at birth and recording marriages (Target 16.9) can provide legal evidence to help prevent child, early and forced marriage.

Developed with a vision to accelerate progress towards these goals, the Generation Equality Action Coalition on Gender-based Violence offers a unique and strategic platform for advancing cross-sectoral efforts to address GBV against women and girls in all their diversity. The Global Acceleration Plan for Gender Equality<sup>97</sup> that was launched at the Paris Forum in 2021 includes a clear action plan over five years with concrete and ambitious targets including *"550 million more women and girls live in countries with laws and policies prohibiting all forms of gender-based violence"*, *"100 countries have built law enforcement capacity to address gender-based violence"*, *"55 more countries have outlawed child marriage"*, and *"double national and international funding to women's rights organizations, activists and movements working to address gender-based violence against women and girls in all their diversity."*

Most recently, the United Nations Secretary-General's report, *Our Common Agenda*,<sup>98</sup> is an agenda of action designed to strengthen and accelerate multilateral agreements, particularly the 2030 Agenda, and it develops the commitments made by the United Nations Member States in the General Assembly Declaration on the commemoration of the 75<sup>th</sup> anniversary of the United Nations, including to eradicate VAWG and abide by international law and ensure justice.





# **CHAPTER 3: SETTING THE SCENE – JUSTICE MECHANISMS ADDRESSING GBV ACROSS COMPLEX SITUATIONS**

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# CHAPTER 3: SETTING THE SCENE – JUSTICE MECHANISMS ADDRESSING GBV ACROSS COMPLEX SITUATIONS

This chapter offers brief snapshots of the contexts in which GBV survivors access justice across six focus countries: Afghanistan, Honduras, Papua New Guinea, the Philippines, South Sudan and Tunisia. The country snapshots highlight the complex situations that create layers of challenges to addressing GBV in each country.

## AFGHANISTAN<sup>99</sup>

### Box 7: Afghanistan snapshot

|                                                                          |                                                                                                                                                |
|--------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Population</b>                                                        | 43.5 million people                                                                                                                            |
| <b>Languages</b>                                                         | Afghan Persian or Dari, Pashto, and several others                                                                                             |
| <b>Legal system</b>                                                      | Mixed legal system of civil, customary and Islamic (sharia) law                                                                                |
| <b>Women, Peace and Security Index ranking (2021/22)<sup>100</sup></b>   | 170 out of 170                                                                                                                                 |
| <b>Social Institutions and Gender<sup>101</sup> Index ranking (2019)</b> | Very high (53%)                                                                                                                                |
| <b>Prevalence of physical or sexual IPV over last 12 months</b>          | 46.1% of women (DHS, 2015) <sup>102</sup>                                                                                                      |
| <b>Child marriage</b>                                                    | 35% of women aged 20 to 24 years were first married or in union before age 18 (UNICEF global databases 2018) <sup>103</sup>                    |
| <b>Honour killings</b>                                                   | 280 cases from 2016 to 2017. Fifty of these cases (18%) resulted in conviction of the perpetrator and prison sentences (UNAMA). <sup>104</sup> |



**Afghanistan is a diverse country, with a variety of cultures, religions and histories as well as geography shaping its social and political institutions, including the justice system.**<sup>105</sup> While significant achievements were made in the 2001–2021 period to mitigate violence against women and girls, strengthen their access to justice, and improve their meaningful participation in the country’s social, economic and political life, VAWG remains one of the most serious human rights challenges in Afghanistan. Following the fall of the Afghan government in August 2021, the future of Afghanistan is in a state of uncertainty, particularly relating to the rights of women and girls. All data collection for this paper was conducted just prior to this event, and it is unclear to what degree the Taliban will undermine the progress made towards gender equality and reducing GBV, or how willing they may be to allow international and national aid organizations to continue some of their work.<sup>106</sup>

The Taliban emerged in the early 1990s in northern Pakistan following the withdrawal of Soviet troops from Afghanistan. By 1998, the Taliban controlled nearly 90 per cent of the country, imposing their own austere version of sharia law.<sup>107</sup> At first, the people embraced the changes as the Taliban took action to root out corruption and lawlessness, and commerce flourished. However, controversial and harsh measures were introduced consistent with the Taliban’s strict interpretation of sharia, which caused national and international outrage. These included public executions of convicts and adulterers; cutting off the hands of thieves; forcing men to grow beards; requiring women to wear burkas; banning television, music and movies; a consistent

pattern of human rights abuses, such as precluding girls over the age of 10 from attending school; and harbouring Al Qaeda.<sup>108</sup>

**After the US-led coalition’s intervention and the fall of the Taliban in 2001, the Government of the Islamic Republic of Afghanistan made important strides in improving women’s meaningful participation in the political, economic, cultural and social life of the country.**

Afghan women activists strongly advocated to include Afghan women in peace talks to increase protection of human rights, including women’s human rights.<sup>109</sup> At the time of this research, women made up 28 per cent of the Afghan legislative body—higher than the global average. Women’s involvement in politics and governance extended well beyond Kabul and other urban centres. International organizations and foreign aid focused on advancing women’s empowerment and gender equality in Afghanistan. They supported and designed initiatives focused specifically on the advancement of women and encouraged the integration of gender-sensitive programming across the development sector.<sup>110</sup> While barriers and challenges remain, including security concerns, open borders that allow those who perpetrate GBV or domestic abuse to escape prosecution, inadequate funding to raise public awareness about the rights of women and girls, and the lack of knowledgeable professional staff across governmental institutions to implement the full panoply of rights to which women and girls are entitled, great strides have been made for women and girls over the past 20 years.

**Women in Afghanistan experience various forms of violence, including physical, sexual, economic, verbal and psychological violence, and violence connected to custom and tradition.**<sup>111</sup>

In 2019, the United Nation's Gender Inequality Index ranked Afghanistan 170th of 189 countries.<sup>112</sup> There are still pervasive and pronounced differences in the treatment of women and girls between urban and rural locations, and between different ethnic populations. Achieving gender equality and women's empowerment in Afghanistan is a complex and challenging endeavour that is more pronounced given the current climate of uncertainty.

**Afghan women are most likely to face violence within their own homes.** In

fiscal year 2018, 4,118 cases (94 per cent of all cases of VAWG), occurred in the survivor's house.<sup>113</sup> Violence within the family is undergirded by pervasive social norms that justify violence. Forced and child marriages are listed among the primary reasons for GBV, domestic abuse and the disenfranchisement of women and girls' rights. About one in three girls in Afghanistan will be married before their 18<sup>th</sup> birthday. Choices about who and when a girl marries are most often made by male family members,<sup>114</sup> and forced/child marriage leaves girls vulnerable to IPV. The custom of giving away girls for dispute resolution, known as *baad*,<sup>115</sup> is another harmful practice that remains widespread throughout Afghanistan. Although the law had criminalized *baad*, it is still a method used between the GBV perpetrators' family and the victims.

**One form of violence that leads to the murder of women is honour killings, which occur based on dignity and honour justifications.** Justification for killing in the name of honour typically is ascribed to the victim having brought perceived shame to the family, and though men are sometimes victims of honour killings, most victims are women and girls. As with other forms of violence against women, this type of violence is often committed with some degree of approval or collusion from the family or community. Purported reasons for honour killing have included being accused of adultery, becoming pregnant outside of a marriage, refusing to marry a partner chosen by one's family, and even being a victim of rape.<sup>116</sup>

**In Afghanistan, the formal legal system coexists with customary forms of dispute resolution, which are most often applied.** Insecurity has seriously affected the ability of the Afghan justice sector to resolve legal disputes and deliver justice outcomes. Due to an environment of constant threat and conflict, the availability of judges and legal professionals, as well as the responsiveness, capacity and professionalism of the legal sector is severely undermined.<sup>117</sup>

**Religious doctrine may be incorporated into the justice system and can be detrimental to survivors seeking justice.**

In Afghanistan, sharia law influences the justice system, including legislation and its interpretation. Sharia is the code of law derived from the Holy Quran and the teachings and examples of the Prophet Mohammed. Under the Taliban, the interpretation of sharia has meant

harsh punishments and human rights abuses. Application of sharia law offers further complexities in seeking justice, such as the unequal standing of women compared to men before the sharia

courts. Sharia law and principles can be applied provided there is no conflict with relevant human rights provisions.

## HONDURAS

| Box 8: Honduras snapshot                                        |                                                                    |
|-----------------------------------------------------------------|--------------------------------------------------------------------|
| <b>Population</b>                                               | 9.90 million <sup>118</sup>                                        |
| <b>Languages</b>                                                | Spanish, Amerindian dialects                                       |
| <b>Legal system</b>                                             | Civil law system                                                   |
| <b>Women, Peace and Security Index ranking (2021/22)</b>        | 104 out of 170                                                     |
| <b>Social Institutions and Gender Index ranking (2019)</b>      | Low (22%)                                                          |
| <b>Prevalence of physical or sexual IPV over last 12 months</b> | 14% of women <sup>119</sup>                                        |
| <b>Prevalence of physical or sexual IPV over lifetime</b>       | 26% of women <sup>120</sup>                                        |
| <b>Femicide</b>                                                 | 6.2 per 100,000 habitants <sup>121</sup>                           |
| <b>Organized crime-related violence</b>                         | 52% of reported femicides linked to organized crime <sup>122</sup> |

**Honduras reflects a complex and unstable context, marked by violence and corruption and infiltrated by organized crime networks.** The population is highly polarized, with an elected government whose legitimacy is contested. A coup d'état in 2009 has led to the erosion of democracy and increased levels of corruption.<sup>123</sup> During the national elections in 2017, the incumbent President was re-elected for a four-year term amid widespread allegations of fraud.<sup>124</sup> Massive civil protests were quashed by police violence.<sup>125</sup> The socio-political crisis exacerbated the levels of social conflict, state repression, organized crime and forced migration, as well as VAWG, including femicide. In 2018, Honduras ranked 146 out of 180 countries for its levels of corruption<sup>126</sup>—with a cost to the country estimated at 12.5 per cent of GDP.<sup>127</sup>

**Organized crime has permeated all levels of society in Honduras.**

This has had a significant impact on socioeconomic development and erosion of the rule of law. Organized crime in Honduras largely consists of gangs and groups related to drug trafficking, with as much as 80 per cent of the drugs that move from South America to Mexico and the United States passing through Honduras.<sup>128</sup> The gangs typically operate by controlling well-demarcated territories, terrorizing the civilian population through extortion, violence, threats of violence, kidnapping and drug sales. An expansion of the power of gangs can be seen in the combination of illegal activities with legal companies, through alliances with political actors, association in licit and illicit businesses, or occupying positions of power, undermining democratic governance.<sup>129</sup> Although some women are actively involved in organized crime, either as members of gangs, drug

smugglers (*mulas*), small-scale drug sellers (*narco-menudeo*) or lookouts (*halcones*), the majority of gang members are men and the leadership of organized crime is in the hands of men.<sup>130</sup>

**The increase in forced displacement is linked to community violence and organized crime.** According to OXFAM most people flee urban violence, fuelled by the dispute over territory between gangs or *maras*, the presence of organized crime, extortion, threats, forced recruitment, sexual violence, and insecurity in their communities.<sup>131</sup> The most vulnerable populations in these cases are boys, girls, women, older adults, truck drivers, the LGBTI community, journalists and human rights defenders.

According to the Mesoamerican Initiative of Human Rights Defenders (IM-Defensoras),<sup>132</sup> rather than improving citizen security, the heightened military and police presence, as well as the forced displacement of populations for the exploitation of natural resources and megaprojects, had led to widespread abuses, physical attacks and violation of women's human rights. During the decade after the 2009 coup d'état, women human rights defenders denounced state persecution<sup>133</sup> using anti-drug laws.<sup>134</sup>

**Honduras has one of the highest rates of violent crime in the world, among countries where war has not been declared.**<sup>135</sup> In 2019, homicides continued to be the main cause of death in Honduras by external causes, with a rate of 44.7 per 100,000 habitants for that year,<sup>136</sup> many times greater than the global average rate of 8.8, and more than double the regional rate of 19.1 per 100,000<sup>137</sup>.



**Honduras also has the highest femicide rate in the world.** In 2019, the femicide<sup>138</sup> rate was 6.2 per 100,000 habitants, the highest rate in the region and the world.<sup>139</sup> Notably, Honduras includes “*links to organized crime*” as a potential classification for femicide, since the 2020 penal code reform. According to the Violence Observatory of the National University of Honduras, 52 per cent of reported femicides in 2019 were linked to organized crime, defined as murders by hitmen or gang members, revenge killings and kidnapping, or in the context of extortion, drug trafficking and trafficking of persons.<sup>140</sup> However, this is likely an under-estimate, due to the high proportion (14 per cent in 2019) of murders of women for which no information is available.<sup>141</sup> In many of these cases, the women were not active participants in the crime, but were witnesses of criminal acts, or were romantic partners or family members of men who were part of these criminal networks. Although femicides are the most extreme form of violence faced by women in Honduras, they represent only the tip of the iceberg in terms of the scale and scope of GBV against women.

**Honduran women and girls also face sexual and physical assaults, domestic violence, forced migration, child sex abuse and human trafficking and smuggling.**<sup>142</sup> In addition to available DHS data, a study conducted in 2017 in the Western region of Honduras by the Global Women’s Institute found a high lifetime prevalence of physical or sexual IPV: 26 per cent, with 14 per cent of women experiencing IPV in the 12 months prior to the survey.<sup>143</sup> This is similar to the regional and global averages of IPV prevalence of 26–28 per cent.<sup>144</sup>

**Access to justice for GBV survivors in Honduras is complicated by widespread impunity.** The Inter-American Commission on Human Rights noted that critical levels of impunity plague Honduras and that care for victims and their families is insufficient and inadequate.<sup>145</sup> The lack of access to justice has the effect of perpetuating and, in some instances, favouring the repetition of serious human rights violations. There is a sense of a “*selective justice*” that acts late without offering an effective response to human rights violations. On the other hand, it favours the interests of various actors linked to the public, political and business power.<sup>146</sup>

**A new penal code was passed and entered into force in 2020,<sup>147</sup> which included some improvements in the framing of GBV,** discussed in the following sections. However, the penal code was widely criticized for lack of transparency and consultation with civil society. The new law reduces penalties for several corruption-related offences, including embezzlement, influence peddling, obstruction of justice and bribery. The law is also retroactive and would benefit those already convicted or facing prosecution.<sup>148</sup> Most notably, it reduces, and in some cases, eliminates carceral penalties for the crimes of extortion, kidnapping and drug trafficking, exacerbating citizen mistrust in the justice system.

## PAPUA NEW GUINEA

| Box 8: Honduras snapshot                                 |                                                                                                                                                                                                              |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Population                                               | 8.95 million                                                                                                                                                                                                 |
| Languages                                                | Tok Pisin, English, Hiri Motu, and approximately 839 indigenous languages spoken                                                                                                                             |
| Legal system                                             | Mixed legal system based on English common law and customary law                                                                                                                                             |
| Women, Peace and Security Index ranking (2021/22)        | 145 out of 170                                                                                                                                                                                               |
| Social Institutions and Gender Index ranking (2019)      | N/A                                                                                                                                                                                                          |
| Prevalence of physical or sexual IPV over last 12 months | 47.6% of women (DHS, 2016–2018)                                                                                                                                                                              |
| Prevalence of physical or sexual IPV over lifetime       | 58% of women aged 15 to 49 years (DHS, 2016–2018)                                                                                                                                                            |
| Sorcery accusation related violence (SARV)               | Of 1,553 sorcery accusations in four PNG hotspot provinces, 298 (29%) involved physical violence, leading to 86 victims suffering permanent injury, 141 suffering serious harm, and 65 deaths <sup>149</sup> |

**Papua New Guinea is one of the most culturally and linguistically diverse countries globally, with over 1,000 tribes and over 800 languages.** PNG consists of four regions divided into 22 provinces, including the National Capital District (NCD) and the Autonomous Region of Bougainville (ARB), which has been affected by civil war (1988–1999), locally referred to as “*the Crisis*”. Most of the population lives in rural and very remote areas, with only 15 per cent of the population living in urban areas.<sup>150</sup> PNG faces the complex challenge

of delivering services to a diverse, dispersed, mostly rural population spread over 600 islands, with limited access to many parts of the country, high logistical costs, and supply management complications.<sup>151</sup> In the past few years, a process of greater decentralization of the Government has taken place. Although funded largely from the national budget, this decentralized system is complex, with multiple tiers of government and administration, leading to variations in provinces concerning their approach to GBV.

**PNG's ranking on the UNDP Human Development Index and the Gender Inequality Index reflect high inequalities in women's reproductive health, education, political participation and labour force participation.** Women are largely absent from political and administrative governance. Historically, only seven women have ever been elected to Parliament, and there are currently no women in Parliament.<sup>152</sup> Cultural and structural factors limit women's ability to participate in politics and hold office. Other decision-making structures, including customary, religious and private arenas, are also male-dominated.

**Levels of GBV in PNG are of epidemic proportions and considered among the highest in the world.** Although there has been no national GBV prevalence survey conducted in PNG to date, numerous studies provide insight into the high rates of violence women and girls in PNG experience throughout their lifetime. Results from the Demographic Health Survey (DHS) 2016–18 revealed that 58 per cent of all women aged 15–49 experienced physical and/or sexual violence by an intimate partner in their lifetime.<sup>153</sup> In another survey, two out of three women surveyed in four provinces reported experiencing domestic violence.<sup>154</sup> In ARB, a post-conflict setting, a population-based study showed that at least 68 per cent of women experienced physical and/or sexual IPV in their lifetime.<sup>155</sup> This is double the global average.<sup>156</sup> The World Bank also ranks PNG as one of the worst countries in the world for sexual violence<sup>157</sup> with 28 per cent of women aged 15–49 having experienced sexual violence by anyone in their lifetime.<sup>158</sup>

**Sorcery accusation related violence is an extreme form of violence with little to no avenues for support or justice for survivors.** SARV is a serious problem in PNG that affects people of all genders, ages, locations and education levels. While the rate and magnitude of SARV is difficult to quantify due to the secrecy and fear surrounding it, a multi-year mixed-methods research project recorded 1,553 sorcery accusations in four PNG hotspot provinces between January 2016 and June 2020. Of these, 298 (29 per cent) involved physical violence, leading to 86 victims suffering permanent injury, 141 suffering serious harm, and 65 deaths.<sup>159</sup> Those accused of SARV suffer harm ranging from stigmatization, discrimination and expulsion from families and communities, to extreme violence, including beatings, cutting of body parts, torture and killings. Most of these incidents occur in public, are perpetrated by large groups, and have the support of the community behind them, which makes stopping the escalation of violence extremely difficult once it has begun. COVID-19 has compounded the complexities associated with SARV accusations because unusual kinds of deaths and illnesses, such as those caused by COVID-19 and HIV/AIDS, are major triggers of sorcery accusations.<sup>160</sup>

**While SARV in and of itself is not GBV, there are clear gendered differences in the types of violence endured by women and men.** Women survivors are more likely to be stripped of their clothing, sexually violated and tortured, while men survivors are more likely to be cut up or killed with a bush knife. The gendered aspect of SARV also varies greatly by geographical location. For example, in Bougainville, men (84 per cent) are mainly accused of sorcery, while in Enga, women (93 per cent) are primarily

accused of sorcery.<sup>161</sup> In addition to having a history of SARV, during the Crisis, the Bougainville Revolution Army made a call to identify and harm sorcerers. This belief has persisted post-conflict and SARV remains prevalent in certain parts of Bougainville. Given the geographical and gender variation of SARV, it is important to look at the issue not only from a gender lens but also from an intersectionality lens that takes into account the various interlocking social positions at the root of SARV.

**In PNG, GBV is deeply rooted in harmful social and gender norms, such as bride price and polygamy, which occur in the context of the complex kinship system.**

Within this system, GBV is fuelled by social norms around communal rather than individual accountability alongside a culture of retribution between different tribal groups. People are hesitant to report violence because it is seen as a family matter that must be resolved within the accepted customary system. This becomes particularly salient in marriages where the husband's family pays a bride price to the bride's family. Bride price is an important cultural tradition seen as a way of joining families through gifts such as pigs, shells, fruits and vegetables. However, with exposure to Western, consumer culture, increasingly large amounts of cash and manufactured goods are being exchanged. Furthermore, since bride price is paid through communal contributions, women are sometimes considered to belong not only to their husband but to his entire family.<sup>162</sup>

Violence is considered to be an inevitable part of life for many women and girls in PNG. Accessing justice in this complex cultural, geographical and structural context can be highly challenging for survivors of violence. However, emerging evidence shows that access to justice and support services for women are increasing in PNG and that violence can be prevented, even in these challenging circumstances.

## PHILIPPINES

| Box 10: The Philippines snapshot                              |                                                                                                                                                                                   |
|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Population                                                    | 109.58 million <sup>163</sup>                                                                                                                                                     |
| Languages                                                     | Filipino (based on Tagalog) and English are widely spoken. The eight major languages are: Tagalog, Cebuano, Ilocano, Hiligaynon or Ilonggo, Bicol, Waray, Pampango and Pangasinan |
| Legal system                                                  | Mixed legal system of civil, common, Islamic (sharia), and customary law                                                                                                          |
| Women, Peace and Security Index ranking (2021/22)             | 61 out of 170                                                                                                                                                                     |
| Social Institutions and Gender Index ranking (2019)           | Very high (53%)                                                                                                                                                                   |
| Prevalence of physical or sexual IPV over last 12 months      | 5.5% of women (DHS 2017 <sup>164</sup> )                                                                                                                                          |
| Prevalence of physical, sexual or emotional IPV over lifetime | 26% of married women aged 15 to 49 years (DHS 2017)                                                                                                                               |
| Child marriage                                                | 15% of women aged 20 to 24 years were first married or in union before age 18 (UNICEF global databases 2018)                                                                      |

**The Philippines is an archipelago in Southeast Asia on the frontlines of global climate change.** In addressing these issues, executive issuances related to disasters have included human rights and gender as considerations in programming. The 2011 National Disaster Risk Reduction and Management Framework promotes community participation, inclusiveness and gender equity.<sup>165</sup> Similarly, the National Disaster Risk Reduction and Management Plan 2011–2028 aims to contribute to gender-responsive and rights-

based sustainable development.<sup>166</sup> On the other hand, the National Climate Change Action Plan 2011–2028 identifies gender mainstreaming as a cross-cutting action [...] highlighted in research and development, including the “conduct of gendered vulnerability and adaptation assessments,” planning and policy making, knowledge and capacity development, and enhancing women’s participation in climate change adaptation.<sup>167</sup>



While the Philippines ranks fairly well in the Global Gender Gap Report of the World Economic Forum (ranking 17th in the 2021 report), is a State Party to various international conventions and treaties that seek to eliminate GBV, and has a robust set of domestic laws that address GBV cases, **many Filipino women and girls continue to experience various forms of GBV.** The 2017 National Demographic and Health Survey of the Philippine Statistics Authority shows that 26 per cent of married women aged 15 to 49 years experienced physical, sexual or emotional violence committed by their husband or partner. The Philippine Statistics Authority adds that 20 per cent of women experienced emotional violence; 14 per cent physical violence; and 5 per cent sexual violence in an intimate relationship.<sup>168</sup>

**Other forms of violence, such as sexual exploitation, rape, physical injuries and trafficking in persons increased in the Philippines from 2018 to 2019.**<sup>169</sup> Cases of sexual exploitation increased by 55.2 per cent (143 to 222 cases); rape cases by 30.6 per cent (1,656 to 2,162); and physical injuries cases by 15.1 per cent (14,116 to 16,251 cases).<sup>170</sup> Incidences of trafficking in women also increased by 66.7 per cent (from 252 to 420 victims) within the same time frame.<sup>171</sup> Despite this, the Philippines maintained its Tier 1 placement in the Trafficking in Persons Report of the US Department of State in 2020.<sup>172</sup>

**The vulnerabilities of GBV survivors are heightened and their access to justice is hindered in post-disaster scenarios.** Disasters and calamities are not new phenomena to the Philippines. Being located both in the typhoon belt and the Pacific Ring of Fire, the country is visited by an average of 20 typhoons annually and is likewise prone to earthquakes and

volcanic eruptions.<sup>173</sup> And even during these calamities and disasters, incidents of GBV are not abated. In 2012, after Typhoon Pablo, there was an increase in reported GBV cases, including from those who engaged in commercial sex work.<sup>174</sup> When Super Typhoon Haiyan hit the Philippines in 2013, “[w]omen bartered sex for food and water, and sex traffickers easily tempted young girls with promises of employment.”<sup>175</sup> The situation in evacuation centres, such as overcrowding and poorly-lit areas, makes women and girls more vulnerable to sexual violence. Moreover, the limited presence of female law enforcement officers in evacuation areas may deter the victims of GBV from reporting, thus affecting women’s access to justice.<sup>176</sup> A 2018 study of the International Federation of the Red Cross and Red Crescent Societies shows women and girls are distressed by these factors after disasters: early marriage, domestic violence, sexual harassment, trafficking, rape and domestic violence.<sup>177</sup>

**GBV is one of many variables that demonstrate how climate change and disaster are not gender-neutral events.** While everyone is affected by calamities and disasters, women and other vulnerable groups tend to suffer more because of their circumstances and situations.<sup>178</sup> Thus, there is a need to increase women’s participation and mainstream a gendered and intersectional approach in the disaster risk reduction and management discourse, including policymaking and programming.

## SOUTH SUDAN

| Box 11: South Sudan snapshot                                  |                                                                                                                        |
|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Population                                                    | 11.19 million                                                                                                          |
| Languages                                                     | English, Arabic (includes Juba and Sudanese variants), regional languages include Dinka, Nuer, Bari, Zande and Shilluk |
| Legal system                                                  | Mixed legal system of civil and customary law                                                                          |
| Women, Peace and Security Index ranking (2021/22)             | 165 out of 170                                                                                                         |
| Social Institutions and Gender Index ranking (2019)           | N/A                                                                                                                    |
| Prevalence of physical or sexual IPV over last 12 months      | 49% of ever-partnered women <sup>179</sup>                                                                             |
| Prevalence of physical, sexual or emotional IPV over lifetime | 73% of ever-partnered women <sup>180</sup>                                                                             |
| Non-partner sexual violence (including by armed actors)       | 1 in 3 women surveyed (60% of these cases prior to age 18)                                                             |

**South Sudan has been plagued by decades of layered political, ethnic and intercommunal conflicts.** Following a civil war with Sudan, a comprehensive peace agreement was signed in 2005, which ended the conflict and paved the way for South Sudanese independence in 2011.<sup>181</sup> Since gaining independence, South Sudan has been marked by ongoing conflicts related to political and ethnic divisions, including a bloody civil war that erupted in December 2013. The 2013 civil conflict arose from political disagreements between the nation's first president, Salva Kiir, and former vice president and primary opposition leader Riek Machar, who represented different

ethnic tribes in South Sudan (Nuer and Dinka, respectively). The 2013 political conflict exacerbated pre-existing ethnic tensions throughout the country,<sup>182</sup> and while the civil war formally ceased with the signing of a peace agreement in August 2015, political and ethnic tensions have persisted since then.<sup>183</sup> The fighting and instability have killed tens of thousands and displaced over a million people from their homes, including 400,000 who have fled to neighbouring countries.<sup>184</sup> In September 2018, a new peace agreement, “*Revitalized Agreement on Resolving the Conflict in South Sudan*”, or R-ARCSS, was signed that laid the groundwork for a power-sharing

agreement between the government (led by Kiir) and the opposition (led by Machar). This agreement aimed to stabilize the security landscape and normalize the political situation in the country, return and resettle South Sudanese people displaced by the conflicts, and allow for greater humanitarian support over a two-year period.<sup>185</sup>

**Intercommunal conflicts have added an additional layer of violence and instability in South Sudan, especially for women and girls.** Cattle, which have historically been a symbol of wealth and status in South Sudanese society, are at the centre of most intercommunal conflicts. Cattle are used as currency and to formalize social bonds, including through marriage, as cows are commonly used to pay bride price. Intercommunal cattle raids have been a feature of life in South Sudan for years. However, they are exacerbated in times of armed conflict and insecurity as a means of regaining economic footing. Cattle raids often trigger a harmful cycle of revenge attacks, which can include the killing, rape and abduction of women and girls.<sup>186</sup>

**Protracted conflict and global economic trends have had a detrimental impact on the South Sudanese social and economic fabric.** The drop in global oil prices has also hurt the economy, decreased funding for the effective implementation of the R-ARCSS, and eroded the political, social and educational institutions that offer key services to the population.<sup>187</sup> This includes access to justice for GBV survivors, as the weakening of justice institutions has made the South Sudanese government unable to guarantee the rule of law.<sup>188</sup> Food insecurity remains an urgent problem in South Sudan, and humanitarian actors (such as the World Food Program) are

having trouble meeting the basic needs of South Sudanese people.<sup>189</sup> About 51 per cent of the population lives below the poverty line, and over half the population is currently experiencing hunger.<sup>190</sup>

**Women and girls in South Sudan experience high rates of violence across the course of their lives, exacerbated by the conflict.** Women and girls suffer many forms of GBV throughout their lives, starting from the time they are very young. According to a mixed methods study conducted in 2016 in three sites particularly affected by the conflicts, 65 per cent of women and girls experienced physical or sexual violence over the course of their lifetimes. One in three women surveyed experienced sexual violence from a non-partner, including armed actors, and 60 per cent of the cases occurred before the age of 18. These rates of GBV are among the highest in the world.<sup>191</sup>

**Intimate partner violence is the most common form of GBV in South Sudan.** Despite the extremely high occurrence of rape by non-partners, women and girls experience more violence by intimate partners than by anyone else. In the GWI study, as many as 73 per cent of ever-partnered women reported experiences of physical or sexual IPV, and 49 per cent experienced IPV during the 12 months prior to the survey.<sup>192</sup> Another nationally representative study found that 45 per cent of women experienced physical IPV during the previous 12 months.<sup>193</sup> All forms of GBV, including IPV, have been exacerbated by the conflict conditions. Other harmful, patriarchal practices (such as child and forced marriage, wife inheritance and polygamy) have created discriminatory conditions for increased GBV against women and girls.<sup>194</sup> GBV has also had a significantly negative economic impact on South Sudan, including an

estimated loss of productivity of 8 million days of women's labour (about 6 per cent of total women's labour force).<sup>195</sup>

**Conflict-related sexual violence by armed actors has increased in South Sudan, particularly since the outbreak of conflict in 2013.** Violence committed against women and girls by armed actors has included rape, gang rape, abduction, killing of women, sexual slavery and forced abortion. Although sexual violence has threatened women's lives during the many decades of conflict that South Sudan has endured, many experts feel that it has worsened during the most recent crisis. Further, rape, abduction and killing of women and girls also take place during intercommunal cattle raids.<sup>196</sup>

**The justice system in South Sudan operates on two tracks: the formal and customary systems.** The formal system is guided primarily by the 2011 South Sudan Transitional Constitution, which came into force upon independence, and the customary system is implemented by the local courts, known as "*Boma Courts*", and (primarily male) Boma chiefs. The Transitional Constitution acknowledges "*the customs and traditions of the people*" in addition to the constitution as legitimate legal frameworks, creating some tension and confusion in the application of law.<sup>197</sup> Justice for GBV survivors is most frequently accessed at the local level through the customary system. The customary laws vary by community but tend to focus more on restoring and maintaining peace within a community rather than ensuring accountability for perpetrators or protecting victims. The weakening of the rule of law as a result of the conflict and crises, and a culture of impunity around violence have

made it less likely that perpetrators are held accountable in South Sudan. Key informants report that many of the same actors who are now enforcing justice through the formal system committed acts of GBV during the conflict, which may contribute to hindering survivors' trust in the formal justice system. Very few GBV perpetrators have faced any sort of meaningful accountability through the formal justice system, further disincentivizing survivors to report.

## TUNISIA

| Box 12: Tunisia snapshot                                 |                                                                                                              |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Population                                               | 11.82 million                                                                                                |
| Languages                                                | Arabic, French, Berber (Tamazight)                                                                           |
| Legal system                                             | Legal system of civil law, based on the French civil code                                                    |
| Women, Peace and Security (WPS) Index ranking (2021/22)  | 117 out of 170                                                                                               |
| Social Institutions and Gender Index ranking (2019)      | High (48%)                                                                                                   |
| Prevalence of physical or sexual IPV over last 12 months | 10% (WHO 2018 <sup>198</sup> )                                                                               |
| Prevalence of physical or sexual IPV over lifetime       | 47% of women <sup>199</sup>                                                                                  |
| Child marriage                                           | 2% of women aged 20 to 24 years were first married or in union before age 18 (UNICEF global databases, 2018) |

**Tunisia is a country in the MENA region, currently undergoing a democratic transition.**<sup>200</sup> The Tunisian revolution (sometimes called the “*Jasmine Revolution*” or “*Revolution of Dignity*”) lasted four weeks, between December 2010 and January 2011, and led to the departure of the President of the Republic of Tunisia, Zine el-Abidine Ben Ali, who had been in office since 1987. The transition led to the establishment of a constitution adopted on 26 January 2014, which has recently been superseded by a new constitution in 2022. Tunisia does not apply Islamic sharia or traditions. Its law is exclusively positive. Tunisia is the only Arab Islamic State in which equality between men and women has been granted in personal status matters, since

the adoption of the Personal Status Code in 1959. An expanded notion of equality is enshrined in the 2014 Constitution, article 46: “*The State commits to protect women’s accrued rights and work to strengthen and develop those rights. The State works to achieve parity between men and women in elected councils. The State is taking the necessary measures to eradicate violence against women*”.

**The promotion and protection of human rights in general and of women’s human rights in particular constitute essential elements of the Tunisian Government’s political aims.** The Government strives to promote itself amongst the international community as a modern State respectful of fundamental freedoms and rights,<sup>201</sup>

and Tunisia is viewed as a relatively advanced country in terms of women's rights.<sup>202</sup> Tunisia is currently ranked 123<sup>rd</sup> on the Global Gender Gap Index of 2014 according to the World Economic Forum and is therefore one of the highest-ranking countries in the Arab world.

**In spite of this progress, gender inequalities persist in Tunisian law and society.** Violence against women is a critical problem: nearly 50 per cent of Tunisian women have been subjected to domestic violence and abuse during their lifetime, and nearly 80 per cent have been victims of sexual harassment in public spaces.<sup>203</sup> Patriarchal attitudes and practices contribute to inequality between men and women, weakening access to justice for GBV survivors. Women face indifference or gender bias and stereotyping by State authorities such as the police and the judiciary during the investigation of crimes committed against them. The rudimentary infrastructure of courts and justice structures, a bureaucracy resulting in slow responses to litigants' concerns, and women's lack of awareness of their own rights impede access to justice. The traditional denial of women's autonomy to make decisions about their lives, their lack of access to education and information about rights, their minimal participation in decision-making, and lack of access to property, land and equal work opportunities are all factors contributing to the so-called feminization of poverty and consequently, to women's lack of access to justice.<sup>204</sup> In addition, society has a negative perception of a woman who brings her husband to justice.

**Tunisian organizations and associations have been created to denounce violence against women and call on public authorities to act urgently on GBV.** National organizations work with international NGOs and multilateral/donor organizations to advance women's rights and protection from GBV. Civil society associations and organizations have called for adopting an approach based on prevention and human rights education, and stress that violence against women is a matter of national security, believing that statistics are insufficient and that the State and civil society must take urgent measures to protect the victims and obtain justice.<sup>205</sup>





## CHAPTER 4: LEGAL FRAMEWORKS TO ADDRESS GBV

Image Credit: © IDLO

# CHAPTER 4: LEGAL FRAMEWORKS TO ADDRESS GBV

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The 2021 Women, Business and Law Report found that about three quarters of the world's countries had instituted good practice legislation on gender equality.<sup>206</sup> Nearly every country in the world (183) addresses protection from violence within their constitutions.<sup>207</sup>

**The most frequent law reform to address GBV has been in the area of domestic violence, followed by sexual harassment.**<sup>208</sup> There has also been important progress at national levels to enforce accountability for perpetrators of sexual violence, including during conflict or post conflict situations. Most countries have adopted 18 as the legal age of marriage for girls, although many countries allow marriage at an earlier age with parental or judicial consent.<sup>209</sup> It is estimated that at least 59 countries have enacted laws against female genital mutilation,<sup>210</sup> and nearly every country in the world has laws to criminalize human trafficking.<sup>211</sup>

However, **the legislative fight to protect women and girls from other forms of GBV has been slower.** Emerging forms of violence (such as cyber harassment and cyberstalking) have yet to be comprehensively addressed globally,<sup>212</sup> and though violence against women in politics is pervasive and growing,<sup>213</sup> laws are slow to address this form of violence. Significant challenges remain in the effective implementation of laws, often due to lack of political will and/or resources.<sup>214</sup> Moreover, discriminatory standards can be deeply entrenched

in legal frameworks, hindering comprehensive legal protection for GBV survivors.

This chapter explores global approaches to GBV legal reform, including examples from focus countries in which legislation is advocated for, blocked or passed against a backdrop of complexity.

## GLOBAL OVERVIEW OF APPROACHES TO GBV LEGAL REFORM

Constitutional provisions on equality and non-discrimination provide the foundation for all laws on GBV. Constitutional reform processes offer an opportunity not only to include specific provisions on GBV that are based on international and regional standards, but also to build a visible public platform for reform and advocacy around gender equality and GBV.<sup>215</sup> While legislative reform is a significant achievement, it is only a first step in the long process of ensuring justice for GBV survivors.

**Law reform to address GBV is often pursued through the following four mechanisms:**

1. Revising **criminal law** to include offences related to GBV
2. Reforming existing **civil and family laws** to reduce discrimination against women and girls and strengthen women's rights within the family
3. Enacting **special laws** on violence against women

**4. Strategic litigation** to set precedent on GBV

In addition to legal reform, effective implementation of key legal provisions is crucially important. Informants across focus country contexts reported challenges in the implementation of existing laws. Failure to apply existing laws can serve as a barrier to justice for GBV survivors, just as the absence of critical GBV legislation.

**Box 13:** Overview of key legal provisions and policies on GBV in six countries

|                                                       | Afghanistan<br>(before 15 August 2021) | Honduras | PNG                         | Philippines                                                                                                               | South Sudan                     | Tunisia                     |
|-------------------------------------------------------|----------------------------------------|----------|-----------------------------|---------------------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------------|
| <b>Special GBV law</b>                                | Yes                                    | Yes      | Yes                         | Yes                                                                                                                       | No                              | Yes                         |
| <b>Legal age of marriage</b>                          | 16 for girls<br>18 for boys            | 18       | 16 for girls<br>18 for boys | 18<br>(though parental consent is required from ages 18 to 21, and parental advice required between the ages of 21 to 25) | Ambiguous and unevenly enforced | 17 for girls<br>20 for boys |
| <b>Marital rape criminalized</b>                      | No                                     | Yes      | Yes                         | Yes                                                                                                                       | No                              | No <sup>216</sup>           |
| <b>National action plan on GBV</b>                    | Yes<br>(WPS that includes GBV)         | Yes      | Yes                         | Yes                                                                                                                       | Yes<br>(WPS that includes GBV)  | Yes                         |
| <b>Ratified CEDAW</b>                                 | Yes                                    | Yes      | Yes                         | Yes                                                                                                                       | Yes                             | Yes                         |
| <b>Ratified Convention on the Rights of the Child</b> | Yes                                    | Yes      | Yes                         | Yes                                                                                                                       | Yes                             | Yes                         |

## REVISING CRIMINAL LAWS

Following the signing of international agreements and fervent advocacy by feminist movements, **many countries have revised their criminal laws to introduce offences related to GBV and amend procedural and evidentiary rules to be more responsive to the needs of survivors and reduce secondary victimization by the justice system.**<sup>217</sup> Of note is the United Nations updated “*Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*”, which provides guidance on survivor-centred justice responses.<sup>218</sup>

Recent promising approaches from around the world include:

- A growing number of States changing their definition of rape to include lack of consent as a constitutive element, rather than linking rape to the use of force or threats of violence (examples include Germany, Morocco)<sup>219</sup>
- Elimination of “*marry your rapist*” provisions (Jordan, Tunisia)<sup>220</sup>
- Protection to survivors during criminal proceedings (e.g., allowing in camera proceedings, physical separation of survivors and perpetrators in the waiting areas and during court proceedings, ensuring survivors provide testimony only as many times as is necessary, barring media coverage of rape trials)<sup>221</sup>

In Honduras, a new penal code entered into force in 2020. The penal code focuses on domestic violence and other forms of violence that disproportionately or exclusively affect women and girls, including human trafficking, sexual exploitation and femicide.<sup>222</sup> Through

amendments to the criminal code and Evidence Act in 2003, PNG has defined marital rape as a sexual offence along with several types of offences (based on the victim’s age and the type of violence), and increased maximum punishments for perpetrators.<sup>223</sup>

Despite the progress made, criminal justice responses to GBV have not been adequate. **In many low- and middle-income countries, penal codes do not criminalize certain forms of physical or sexual violence such as domestic violence or marital rape,<sup>224</sup> and discriminatory provisions and gaps in criminal frameworks exist across all focus countries.**

In South Sudan, the Transitional Constitution of 2011 currently lacks specificity around which acts of GBV are crimes, leaving a vacuum of ambiguity for survivors’ legal recourse.

In Honduras, although the new penal code made some improvements in how VAWG and gender inequality are addressed, the process of drafting and approval of the new code was widely criticized for its lack of transparency or engagement with civil society. According to a Honduran human rights expert interviewed:

*“During the penal code reform process there was no consultation with civil society, despite the fact that we presented many proposals, as did the Inter-American Commission [on Human Rights], the Office of the United Nations High Commissioner for Human Rights, and the National Anti-Corruption Council. The general part is very good, and is a great improvement over the previous one, including incorporating a gender perspective in*



*the delivery of justice, which I think is great. But when it comes to sentencing guidelines for crimes, you find that they reduced penalties and increased benefits for cases of corruption, drug trafficking, and sexual crimes. That, in a country where there is a serious problem of impunity with femicides and sexual violence against women and girls."*

- Key informant from a Honduran CSO

The Honduran penal code includes the discriminatory provision of *estupro*. *Estupro* is committed in two possible ways: 1) non-consensual sexual assault against a person between the ages of 14 and 18; and 2) carnal access that occurs through deception or taking advantage of a situation of manifest superiority. *Estupro* is included in the aggravating circumstances of the crime of rape. Therefore, there is a risk that acts constituting both the crime of *estupro* and rape with aggravating circumstances could be prosecuted only for *estupro*, which would incur much lower penalties than rape. This means that adolescent victims of rape do not have the same protections as adult women or young girls, because *estupro* may be resolved civilly through the payment of fines. Women's rights activists have proposed that *estupro* should be considered as a special case of rape, with a punishment of custodial sentences and fines.<sup>225</sup>

The crime of femicide also omits the recommendations of feminist and LGBTQI+ rights defenders, including aggravated responsibility 1) when the perpetrator is a public official or employee who commits the crime by abusing their authority; 2) in the case of

pregnancy or disability of the victims; and 3) in cases of femicide against trans women.<sup>226</sup> The new Honduran penal code includes other retrogressive provisions that harm women. Importantly, abortion remains criminalized in Honduras,<sup>227</sup> including in cases of rape and risk to the mother's life. Hate crimes against the LGBTQI+ community were eliminated, and provisions that criminalize social protest and freedom of assembly and association were introduced.<sup>228</sup>

In Tunisia, marital rape remains a taboo, and is inadequately addressed by the law. Article 227 of the Penal Code punishes rape "severely", but it does not explicitly criminalize marital rape. Some provisions of the Tunisian penal code are not aligned to international standards, such as punishing women for adultery if they are unable to prove rape, treating sexual violence as a private offence or an issue of morality, allowing perpetrators to escape prosecution by marrying the survivor, and invoking "*honour*", "*provocation*" or voluntary intoxication to escape criminal liability. Evidentiary laws may limit access to justice for women by placing higher burdens of proof on them or reducing the value of their testimony.<sup>229</sup> Gaps in the criminal justice response lead to under-reporting of GBV offences, and even if reported, they are less likely to end in conviction.<sup>230</sup>

In Afghanistan, though the recent penal code of 2018 called for sexual equality before the law and includes punishments for rape and harassment, key discriminatory provisions still exist. Zina, or having sex outside of marriage, is criminalized both for men and women and is penalized with imprisonment. In some extreme cases, both parties are killed to alleviate shame for the families. As in rape cases, zina is sometimes addressed through *baad* (the giving of a

girl or woman to the family of a crime victim) or a survivor being forced to marry her perpetrator. This dynamic makes women reluctant to report rape for fear they will be accused of zina. Marital rape, honour killing, femicide and revenge-related violence are not criminalized in the new penal code. Informants highlighted a societal sentiment that these cases are expected to be resolved within families:

*“No, marital rape is not recognized, when a survivor tries to report marital rape, the response will be that we don’t need to interfere in the marriage life of two persons.”*

- Key informant working at a CSO in Afghanistan

When Afghan women or girls were accused of “*moral crimes*” like zina, they were sent to government doctors for so-called “*virginity tests*”. Article 640 of the new penal code criminalizes virginity tests except under circumstances where the victim has given consent to a gynaecological examination for evidentiary purposes or there is a court order. However, a 2020 study conducted by the AIHRC shows that nearly all cases of virginity testing did not meet these criteria. Thus, there appears to be a discrepancy between what is written in the law and what is done in practice.<sup>231</sup>

## REFORMING CIVIL AND FAMILY LAWS TO ADDRESS GBV

While a strong criminal framework to protect women and girls from violence is essential and often the focus of reform, civil and family laws must be reformed to adequately address GBV and be free from discriminatory provisions. For instance, in cases of domestic violence in marital relationships, criminal sanctions may not be enough to ensure the safety and well-being of women, focused as they are on penalizing perpetrators. Women in such situations express more need for assistance with divorce, division of matrimonial property, child custody/support—which together make it more possible to leave violent spouses.<sup>232</sup>

### **There have been some advances in reforming civil and family laws.**

Legislative reform has been undertaken worldwide to equalize rights on divorce, control over marital property, child custody and maintenance, raise the minimum age of marriage to 18 and legally recognize customary marriages. In 2009, the Philippines enacted the Magna Carta of Women (Republic Act No. 9710) as the embodiment of the Philippines’ commitment to localize CEDAW. The Magna Carta of Women reaffirms the obligations of the State as the primary duty-bearer to ensure women are protected from discrimination and all forms of violence. The document distributes responsibility by designating the Philippine Commission on Women as the primary policymaking and coordinating body working on women and gender equality concerns, and the Commission for Human Rights in the Philippines (CHRP) as the gender and development ombud to work with the Philippine Commission on Women and other state agencies to monitor



compliance with the law. The law also directs all barangay (smallest local government unit) to establish a Violence Against Women Desk to ensure that violence against women cases are addressed in a gender-responsive manner.<sup>233</sup>

**However, progress in eliminating discriminatory laws has been uneven, with over 2.5 billion women and girls still affected by discriminatory laws and lack of legal protections worldwide.**<sup>234</sup>

In South Sudan, while the current Transitional Constitution (2011) has a Child Act that defines “*children*” as under the age of 18, it also ambiguously refers to “*people of marriageable age*”. This loophole has allowed “*marriageable age*” to be defined differently from community to community, as determined by local customary leaders, failing to legally protect girls across South Sudan from child marriage. In the Philippines the legal marrying age is 18 but anyone between the ages of 18 and 21 who wishes to be married must secure the consent of their parents and those between the ages of 21 and 25 have to secure parental advice. The recently passed Act Prohibiting the Practice of Child Marriage (Republic Act No. 11596), which was signed into law in December 2021, prohibits marriage between minors – persons under the age of 18 – and between a minor and an adult. Prior to the enactment of this law, girls who are part of the large Muslim minority<sup>235</sup> could be married as young as 13 years old under the Code of Muslim Personal Laws. Another example of a discriminatory provision against women in relation to marriage is the requirement, in Honduras, for a woman to provide a health certificate demonstrating she is not pregnant, if she remarries within 300 days.<sup>236</sup>

Prior to the Taliban takeover in 2021, Afghan civil law had been developed based on sharia (law derived from the Quran), which tends to discriminate against women and girls in matters of marriage, divorce and child custody. At the time of this research, a new Family Law had been drafted (though not yet approved by the Ministry of Justice), which included several important provisions: 1) increasing girls’ age of marriage from 16 to 18; 2) increasing the age of child custody to 15 for sons, and until age of marriage for girls; and 3) requiring divorce cases to be registered in the courts so women do not need to access the informal justice system. The de facto authorities in Afghanistan are currently reviewing the pending laws and those enacted by the Government of the Islamic Republic of Afghanistan to evaluate their consistency with sharia before taking further action on them.

In Tunisia, the 1956 Code on the Status of the Person allows women the freedom to make choices about when and whom to marry and establishes the minimum age of marriage for women at 17 years (though a mother can consent to the marriage of her children when they are minors). However, inheritance in Tunisia remains based on sharia law, which stipulates that a surviving son is generally entitled to twice the share of a surviving daughter. In 2018, President Beji Caïd Essebsi proposed a draft law establishing parity between women and men in matters of inheritance. A first in the Arab-Muslim world, this move garnered much attention, even outside Tunisia. The Tunisian cabinet adopted the draft bill and in February 2019, presented it to parliament, where it then lingered amid strong opposition from conservative forces. President Essebsi died in summer 2019, and the proposed law lost its

primary champion. The results of the parliamentary and presidential elections, held in the autumn of that year, all but ensure the draft bill will fail to pass in the foreseeable future.<sup>237</sup>

Human rights actors have consistently advocated for the repeal of discriminatory laws and harmonization of formal laws with customary, traditional and religious laws for gender equality. A promising approach in this regard is Musawah's advocacy efforts for justice and equality in Muslim families and engagement with CEDAW reporting processes on Islam and women's rights.<sup>238</sup> In 2020, Musawah launched a Campaign for Justice in Muslim Family Laws that brings together advocates from MENA, sub-Saharan Africa and Southeast Asia to highlight the urgency of reforms toward equality and justice for women living in Muslim contexts.<sup>239</sup>

The multi-stakeholder strategy for accelerated action, Equality in Law for Women and Girls by 2030, was launched in 2019. This strategy seeks to fast-track the repeal of discriminatory laws in six thematic areas in 100 countries by 2023 by conducting thorough analyses of national laws from a gender perspective, designing road maps to guide reform processes, ensuring recommendations from treaty bodies are incorporated at the national level, engaging the judiciary to strike down discriminatory provisions and supporting the repeal or revision of all formal laws that discriminate against women, including discriminatory rape laws, inadequate anti-violence laws, discriminatory minimum age provisions that put girls at high risk of GBV, such as early and forced marriage, rape, or sexual exploitation, especially during crisis situations, and other discriminatory provisions in personal status laws that

impede on women's right to be protected from various forms of violence.<sup>240</sup>

## SPECIAL LAWS

**Approximately 75 per cent of countries around the world have laws addressing domestic violence.**<sup>241</sup> Women living in countries with domestic violence laws have a 5.4 per cent less chance of experiencing violence compared to women in countries without such laws,<sup>242</sup> indicating the potential legislative reforms hold even if laws alone are not enough to eliminate violence.<sup>243</sup>

Global tools such as the Framework for Model Legislation on Domestic Violence of 1995 have provided useful guidance for drafting special laws.<sup>244</sup> Similarly, the model rape law framework by the United Nations Special Rapporteur on Violence against Women provides important guidance on adapting international standards to national rape laws.<sup>245</sup> The United Nations Handbook for Legislation on Violence Against Women recommends identifying a clear legislative goal while drafting GBV laws, undertaking comprehensive consultations with all relevant stakeholders, particularly GBV survivors, and adopting an evidence-based approach to legislative drafting.

Several focus countries in this study have special GBV laws<sup>246</sup>. Tunisia promulgated a law on violence against women in 2018, which is based on four pillars (prevention, protection, care and prosecution) and identifies several forms of violence, including physical, psychological, sexual, economic and political violence.

The Philippines has passed a suite of special laws addressing forms of GBV and discrimination, including the Anti-Sexual Harassment Act of 1995,<sup>247</sup> Anti-Violence against Women and their

Children Act of 2004 (Anti-VAWC Act),<sup>248</sup> Expanded Anti-Trafficking in Persons Act of 2012,<sup>249</sup> and the Safe Spaces Act,<sup>250</sup> among others. The Safe Spaces Act expanded sexual harassment from work, education and training settings to public and online spaces. It covers misogynistic, homophobic and transphobic slurs and adopted the penalties of cybercrime law. It provides for the issuance of a restraining order against the perpetrator by the court whenever appropriate, even before a final decision is made.<sup>251</sup>

The Law on Elimination of Violence Against Women (LEVAW) was adopted in Afghanistan by presidential decree in 2009, propelled by strong advocacy from civil society in the face of opposition from conservative parliamentarians. LEVAW criminalized for the first time 22 forms of violence against women, including sexual assault, beating, selling and buying of women, murder, forced and underage marriages, harassment, deprivation of property and inheritance rights, denial of the right to education, work and access to health services, and polygamy. LEVAW also served as a tool for tracking violence against women cases in Afghanistan, requiring annual reports on national violence against women statistics by the government.

PNG criminalized domestic and sexual violence through the Family Protection Act of 2013. In PNG, GBV is often referred to as “*family sexual violence*”, recognizing that domestic violence is not limited to a partner, but can also include violence perpetrated by family members. One of the key provisions of the Act is to allow both village and district courts to provide women with civil family protection orders (FPOs), with clear criminal consequences for respondents who violate the orders. Additionally, the Lukautim Pikinini Act of 2015, or Child Welfare Act,

grants children rights according to the Convention on the Rights of the Child and covers abuse, neglect, ill treatment, violence and exploitation of children.

Honduras passed a Law against Domestic Violence in 1997, as well as a Law of Equal Opportunities for Women in 2000; and Decree 23-2013 amending the Criminal Code to introduce the crime of femicide .

However, **special laws on GBV are not a panacea, and many include crucial gaps.**

For example, legal protection for sexual violence as a form of domestic violence is weak, as is protection for economic violence. Two thirds of the laws on domestic violence worldwide do not cover women in non-marital relationships.<sup>252</sup> In addition, much of the special GBV legislation is poorly implemented, as governments often fail to allocate adequate budget for implementation.<sup>253</sup>

In Honduras, the Law against Domestic Violence of 1997 (reformed in 2005 and 2013) includes provisions that fail to centre the survivor. According to the law, the first reported incident of violence is dealt with in civil courts,<sup>254</sup> with penalties ranging from one to three months of community work. Domestic violence only becomes a criminal offence in Honduras if there is a second incident. In addition, the Honduran domestic violence law allows judges to mandate counselling, not only for the aggressor, but also for the survivor.

South Sudan does not yet have a special law on GBV, though current legal reform efforts are primarily focused on three legislative priorities: 1) a standalone GBV bill; 2) a Sexual Offences Act; and 3) a Family Law. The GBV bill would specify the criminal acts that constitute GBV and enshrine the age of marriage across South Sudan as 18. The Sexual Offences

Act would define rape, differentiate it from defilement, and specify other forms of criminal sexual offences. The Act would also differentiate between the rape of an adult and rape of a child. The Family Law would include both a marriage Act and a divorce Act, specifying rules around grounds for divorce, succession of property in the event a spouse dies, and what property is subject to these rules. The Family Law would also define marriageable age, which would comply with the marriageable age of 18 in the GBV bill. All three of these bills have been introduced in parliament but have since stalled. Advocates believe the GBV bill has the best chance of passing, as they have been framing GBV as an issue that affects everyone, both men and boys and women and girls. Research has found that men and boys in South Sudan also experience sexual violence, though not as frequently as women and girls.<sup>255</sup>

**Special laws have also been passed to address particular forms of GBV.** In PNG there have been key changes in the law to protect survivors of SARV and prosecute perpetrators. The PNG Parliament (under the advice of the Constitutional and Law Reform Commission of PNG) repealed the Sorcery Act of 1971 in 2013. An amendment in the Criminal Code Act 1974 now gives the highest penalty of life imprisonment for sorcery accusation-related murders. Femicide, which constitutes a majority of the total intentional homicides of women in Latin American and Caribbean countries, has also been an increased area of attention for special laws. In most cases, femicides are committed by someone who is or has been in an intimate relationship with the woman.<sup>256</sup> The gravity of this form of GBV has compelled 18 states in Latin American countries to either enact laws or reform existing laws to include

femicide, feminicide, or aggravated homicide due to gender as separate criminal offences.<sup>257</sup> Most of these provisions are part of comprehensive laws on GBV, though a few countries (e.g. Argentina, Colombia, Guatemala, Peru and Uruguay) have separate laws on femicide.

Overall, **for law reform to be successful, it is important for legislation, and in particular special laws, to be adequate and address sustained funding, national strategies and complementary policy, and coordination of service and justice delivery.**<sup>258</sup> Continuous monitoring and assessment of legislative implementation is also crucial to measure impact and identify gaps for further reform to achieve gender justice objectives. Many countries have incorporated provisions on data collection in the law (e.g., Mexico's Law on Access of Women to a Life Free of Violence, which creates a data bank on GBV).

## STRATEGIC LITIGATION

**Strategic litigation holds great potential for individual, social and legislative transformation and is an important tool for gender justice.** Public interest lawyers, human rights advocates and the women's movement have used the courts since the 1990s to effect legislative reforms, challenge structural discrimination, and raise awareness of human rights violations and obstacles to claiming equal rights. Successful strategic litigation is usually pursued alongside advocacy and communications initiatives and requires sustained funding and coordinated efforts from a range of stakeholders (e.g., survivors, CSOs, lawyers, experts, United Nations entities, donor agencies, academics, journalists

and others)<sup>259</sup>, in addition to an enabling environment.

**A survivor-centred and gender sensitive approach to strategic litigation is critical to ensure survivors' meaningful participation in the process**, from the beginning of the case, strategy and jurisdiction selection, maintaining a safe environment through the provision of support and continuous risk assessments, to ensuring that litigation outcomes are in line with survivors' justice needs.

Strategic litigation can be a useful tool to change laws, policy, procedures and ways of working to address the needs of GBV survivors, which are particularly acute in situations of conflict, post-conflict and insecurity.<sup>260</sup> Some notable examples of strategic litigation include cases that paved the way to: recognition of marital rape in Nepal<sup>261</sup>, issuance of guidelines on sexual harassment at the workplace in the absence of a law in India (*Vishaka v. State of Rajasthan*, 1997) and striking down discriminatory citizenship laws in Botswana (*Attorney General v. Unity Dow*, 1992).

In the above examples, strategic litigation has been seen as a way to effect changes in the legal framework, including in the face of government reluctance to reform legislation. A key informant in South Sudan reflected on the advocacy power of a “*landmark case*” to make legislative changes in the country, in particular moving forward on GBV-related legislation that is currently stalled in parliament.

## **CONFLICT AND COMPLEXITY: A UNIQUE OPPORTUNITY TO ADDRESS GBV**

**Post-conflict state-building processes often present opportunities for adopting new legal and policy frameworks on GBV**<sup>262</sup> through increasingly participatory and inclusive processes.<sup>263</sup> For instance, despite challenges faced, women's participation in constitution making processes in Nepal had significant benefits. Article 38 (3) that prohibits physical, mental, sexual, psychological and other forms of violence or exploitation on grounds of religion or social or cultural tradition or practice was included in the 2015 Constitution. Based on this provision, substantive law reforms followed, including the promulgation of new laws on harmful practices, sexual and domestic violence and trafficking.<sup>264</sup> Similarly in Uganda, constitution making after democracy was restored in 1986 involved a participatory process and the inclusion of women lawyers in the Constitutional Commission. Subsequently, the Ugandan Constitution included strong provisions on women's right to equal treatment and affirmative action. The Ugandan model was followed by Rwanda, which in its 2003 Constitution included a focus on genocide, crimes against humanity, and a 30 per cent quota for women at all decision-making levels.<sup>265</sup>

In our countries of focus, crises also offered an opportunity to enhance dialogues on better GBV laws and policies. In South Sudan, an agreement following decades of armed civil conflict may offer some innovative space for addressing GBV. In September 2018, a peace agreement – R-ARCSS – was signed that laid the groundwork for a power-sharing agreement between the



government and the opposition. This agreement aimed to stabilize the security landscape and normalize the political situation in the country, return and resettle South Sudanese people displaced by the conflicts, and allow for greater humanitarian support over a two-year period.<sup>266</sup> The R-ARCSS has yet to make a significant impact on access to justice in South Sudan, as it has taken time to establish the infrastructure to support its implementation. However, the peace agreement raises GBV as a priority issue, and lays the groundwork for addressing it through the establishment of specialized justice mechanisms, including a special GBV court. One key informant noted that the peace agreement provides a legal basis from which women's groups (many of which are signatories to the agreement) can advocate and change the way the international community engages with South Sudan on GBV. The R-ARCSS also seems to be opening space for government actors to become more engaged with GBV. The current Minister of Defence is now a woman, originally from the opposition, and may be more open to addressing sexual violence (she has recently come out in support of the hybrid court, laid out in Chapter V of the R-ARCSS).

As the Philippines contends with the protracted impact of climate change, their legal framework has been shaped to address the particular vulnerabilities of women and girls in disasters. The Philippines' Magna Carta of Women specifically provides that women have the right to protection and security in times of disasters, calamities and other crises, through all phases of relief and recovery efforts.<sup>267</sup> The Magna Carta of Women highlights the need to address the particular vulnerabilities of women and protect them from exploitation and

GBV during complex situations. Similarly, the Philippine Disaster Risk Reduction and Management Act of 2010 recognizes that women face a higher exposure to risk during disasters.<sup>268</sup> Thus, local government units and other concerned agencies are tasked with developing and implementing gender-responsive and rights-based plans to proactively prevent sexual violence in evacuation centres and other relocation sites.<sup>269</sup>

## NATIONAL ACTION PLANS

**National action plans are another mechanism to address GBV, separate from but complementary to legal reform.** Over the last few decades, many countries around the world have developed GBV national action plans, or other national action plans on related issues, such as the Women, Peace and Security agenda. Tunisia, for example, developed a national action plan in 2018 focused on empowering women and girls and promoting their participation in efforts to prevent conflict and violent extremism, eradicating all forms of GBV, and ensuring stable and durable peace.<sup>270</sup> Tunisia also has a National Strategy for Combating Violence Against Women Across the Life Cycle.<sup>271</sup>

Some GBV national action plans are considered quite strong. These plans tend to have the following elements in common:

- Survivor-centred and survivor-led
- Multisectoral and multilevel, promoting coordination among jurisdictions and sectors
- Coordination and complementarity between the national action plan and existing laws and policies



- Adequate funding that invests in primary prevention, as well as justice and response
- Promote evidence-based approaches
- Include indicators and mechanisms for monitoring and evaluations
- High-level leadership authority
- Tailored responses, taking into account women experiencing multiple, intersecting forms of discrimination
- Strong civil society input in the process of national action plan development, implementation and monitoring
- Support to women's movements.

**Although national action plans are a welcome development, most face many challenges and often fail to move the needle significantly in addressing GBV.**

Some reasons for this include a lack of consistency and alignment between national action plans and legislation, weak monitoring and accountability, inadequate budget appropriation, low authority of the lead agency for the advancement of women (often consisting of mechanisms that are second or third tier below ministerial level), and the fact that national action plans are often developed by external consultants supporting international organizations, with little engagement of civil society and buy-in from the Governments themselves. Therefore, some countries have state-of-the-art national action plans that are unlikely to realize their full potential. In PNG, for example, even though the Government led consultations and created the national action plan, there is no mechanism of accountability attached to it.<sup>272</sup>

## THE ROLE OF THE WOMEN'S MOVEMENT IN LEGAL REFORM

**Research has shown that a critical condition for progressive legal reforms and policy change has been the presence of feminist movements in national contexts.**<sup>273</sup>

Autonomous feminist movements have led advocacy campaigns and undertaken strategic litigation that have influenced legal developments at the national, regional and international levels.<sup>274</sup> They have been effective in adapting international and regional standards to national contexts, both in the framing and implementation of laws. Countries with the strongest feminist movements tend, other things being equal, to have more comprehensive policies on GBV when compared to those with weaker or non-existent feminist movements.<sup>275</sup> Additionally, in situations of conflict and fragility, ensuring women's participation in peace building and governance processes has also shown to lead to more equitable and lasting peace agreements.<sup>276</sup>

**The United Nations Working Group on the Issue of Discrimination against Women has noted a growing trend of setbacks in women's rights, including attacks on autonomous women's movements and CSOs by State and non-State actors.** This underscores the need to support and protect the crucial role that women human rights defenders play in progressive policy change, including on GBV.<sup>277</sup>

Women's organizations have been crucial in pushing for GBV reform in the focus countries. The majority of the laws in PNG were achieved through years of advocacy by women's rights and civil society groups, as well as technical and

financial support from donors such as the Government of Australia. CSOs such as Eastern Highlands Family Voice, Bougainville Women's Federation, Leitena Nehan and Nazareth Centre for Rehabilitation have been advocating for women's human rights and violence prevention for decades. In the Highlands, the Kafe Urban Settlers Women's Association (KUSWA), Kup Women for Peace, and the Human Rights Defenders Network work at the community level to defend the human rights of women and girls and protect them from GBV and SARV.<sup>278</sup> In South Sudan, Steward Women, a women's organization founded by lawyers, has campaigned for the ratification of the Maputo Protocol and pushed for key GBV legislation, while the Federation of Women Lawyers in South Sudan has also played an important role in legal reform, including producing briefs to support the passage of the above bills.

## KEY LESSONS

- Laws alone are not enough, and barriers to implementation can hinder the impact of legal reform on GBV.** There has been much global attention on passing new laws on GBV in the past three decades, and many countries have adopted legislation. However, the mere presence of laws does not always translate easily into changes in practice, and justice actors are often the slowest to change. New laws are only a small part of a larger process of reform that is needed to improve the lives of women and girl survivors of violence.
- A multisectoral approach to legal reform is crucial for lasting progress.** All forms of GBV must be recognized as crimes, but criminal justice responses to GBV are inherently limited. Criminal justice is only one contribution to the multisectoral response needed to achieve justice for survivors and an end to violence against women.
- Rules of evidence and procedure must be survivor-centred.** Discriminatory evidentiary or procedural requirements persist in all six contexts. For example, research informants mentioned virginity tests as one of the main forms of evidence for proving the crime of rape in Afghanistan.
- Legal reform and policies such as national action plans on GBV must have adequate funding and sustained monitoring to be successful.** Continuous monitoring and assessment of legislative implementation is crucial to measure impact and identify gaps for further reform to achieve gender justice objectives.
- Open and inclusive approaches must be adopted for the formulation of laws, policies and strategies on GBV, including clear strategies for consultation with civil society, particularly women's organizations and movements.** This underscores the necessity to recognize, support and promote the crucial role of women's organizations and their movements in addressing GBV, including in legal reform.



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# **CHAPTER 5: JUSTICE MECHANISMS – CONSTRAINTS AND OPPORTUNITIES FOR WOMEN'S ACCESS TO JUSTICE IN COMPLEX SETTINGS**

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International standards and national laws and action plans have increased opportunities for women to seek justice for GBV. Nonetheless, they are just the first steps to improving justice outcomes for women. Barriers persist, hindering justice for survivors of GBV.

## BARRIERS TO REPORTING GBV TO FORMAL INSTITUTIONS

**Most women never report the violence they experience to the formal justice system.**<sup>279</sup> Among the few who do formally report, women and girls often withdraw their complaints before they are able to make it all the way through the criminal justice systems.

Key informant interviews and focus group discussions conducted for this study highlighted a myriad of factors that contribute to underreporting:

## SOCIAL NORMS AND COMMUNITY PRESSURE

*“Survivors or their families don’t want to disclose the case of rape because of shame and fear of a negative reaction from the community. The perpetrator mostly escapes, but sometimes when the community becomes aware of the case, they either stone him or submit him to the police.”*

- Key informant from a CSO in Afghanistan

**Patriarchal social norms that permeate families and communities negatively impact both women’s likelihood of experiencing violence, and how she accesses justice in the wake of violence.**

In South Sudan, society gives paramount importance to men’s voices – as one informant highlighted: *“If the man says no, no one will say yes.”* Women are often considered the property of their husbands and, to some degree, of their communities. Key informants report that social norms in South Sudan tend to promote acceptability by both men and women of IPV, including marital rape.<sup>280</sup> Men are viewed as having



the right to have sex with their wives whenever they like. If a woman wants to report violence by a partner, she is sometimes expected to first share it with her in-laws before reporting it externally. Emphasis is placed on maintaining peace within the family, with brothers and uncles sometimes serving as mediators in situations where a woman has experienced violence from her partner. As one informant shared, “*Men’s reputation comes first*”, and women and girls who experience violence are expected to stay silent for fear of harming the man’s reputation. There is also significant stigma attached to sexual violence, which makes women and girls who have been raped less likely to report the incident.

In the Philippines, victim blaming and normalization of violence prevents survivors from reporting cases of violence. For example, key informants interviewed for this study explained that barangay officers can be hesitant to issue barangay protection orders because they believe that violence in the couple is just a “*normal fight between husband and wife*” (*nag-aaway lang yung asawa*).<sup>281</sup> In small communities where barangay officials may be closely affiliated to the perpetrators or in places where barangay officials are less sensitive to gender power dynamics, there’s a lower probability that women will seek help or ask for barangay protection orders.

The CHRP has also received complaints of judges telling women that the case is a domestic dispute (*away-bahay ‘to*). The use of offensive, gender-insensitive language is still prevalent, with some judges asking survivors of rape or sexual harassment “*nag-enjoy ka ba*” – did you enjoy it? Prosecutors and judges sometimes push for reconciliation between the survivor and the perpetrator

to bring the family together again, reminding them of their solemn vows as spouses. The prosecutors in many cases will attempt to reconcile both parties. If the prosecutor fails to do so, the judge will also try to do so. Informants also mentioned that judges who are devout Catholics sometimes quote scripture from the Bible when trying to reunify a survivor and perpetrator.

Transgender women also face immense discrimination due to social and cultural attitudes. In the Philippines, society does not view transgender women as women, or what they experience as violence. The CHRP, interviewed for this study, has received anecdotal reports that rape complaints of transgender women were dismissed by the police, with the police sometimes indicating that transgender women asked for it or put themselves at risk (“*hindi ba iyon ang gusto nila?*” – *isn’t that what they want?*). The lack of gender-sensitive attitudes and training of officials represents broader societal stereotypes and greatly hampers survivors’ access to justice.

During a focus group discussion, a group of lawyers who were interviewed for this study in Tunisia described how women and girls who are victims of sexual violence are subject to other forms of violence from the family (rejection, physical violence, etc.). Women are punished, and sometimes beaten by the men of the family who are considered guardians of the family honour and may deem the victims dishonourable. It is this fear of reprisals that locks women and girls into silence and constitutes a major obstacle to denouncing sexual violence.

Women and girls in Afghanistan also face family pressure not to report incidents of violence. Not only might family members

dissuade a survivor from reporting the violence, but informants also described other, more severe consequences for reporting violence:

*“The main challenges that survivors face in reporting their cases is their family. Family members are the first ones who will tell her not to file a complaint. That this will not give a good image and will be bad for her family. They try to convince her not to report the violence, to avoid having a bad reputation in society. Due to these norms and attitudes, they will not be able to go to the justice sector.”*

- Key informant from the Government of Afghanistan

*“In the cases that we witnessed normally when a girl or a woman is in this situation, they are very traumatized – if their family become aware of the situation, she may get killed or the family may take revenge on the boy’s family.”*

- Key informant from a CSO in Afghanistan

In PNG, survivors are also hesitant to report violence because it is seen as a family matter that must be resolved within the accepted customary system. This is the case in particular in marriages involving the payment of a bride price, where the husband’s family may perceive the wife as property.<sup>282</sup>

## WITHDRAWAL OF REPORTS

**Even when survivors do report violence, these are often withdrawn before they are tried or resolved in courts.**

Informants in Honduras shared that survivors often drop charges due to economic and family pressures. By law, even if the victim does not want to file the report, the case should be remitted to the prosecutor for follow up. Police interviews, however, indicated that if survivors did not want to press charges, the case could not continue. This treatment of GBV cases reflects the cultural norms that still surround violence cases in Honduras. As a member of a CSO mentioned:

*“If there were political will, this type of violence would be strictly of public order and could not be resolved through reconciliation. Because in the end, when the possibility of reconciliation is allowed, it implies that deep down we continue to see the issue of violence against women as a private matter. That it can be reconciled if the victim wants it, but we are talking about a victim with an impact that is not only physical, it is psychological, economic, with a dependence in all senses on her aggressor. And the State cannot allow that.”*

- Key informant from a CSO in Honduras

Withdrawal of survivors’ reports of violence was also cited as a key barrier to justice in South Sudan, PNG and Afghanistan. In Afghanistan, elements of the special LEVAW actually promote the withdrawal of complaints.<sup>283</sup> Per the law, without the victim’s complaint, some “minor” GBV crimes cannot be prosecuted.



## FEAR OF REPRISALS

**Survivors may also fear retribution or reprisal if they formally report GBV.** In South Sudan, a key problem identified by respondents in this study is the protection of survivors and others connected to a GBV case. Survivors, witnesses, family members and others fear retribution by the perpetrator if a survivor reports GBV, further compelling the survivor to keep silent. There are few protections in place to keep survivors safe. There is no system available for survivors to access protection orders. If a survivor has reported IPV, she may have to rely on her parents or family members to keep her safe.

## LACK OF ECONOMIC RESOURCES

**Women's lack of economic resources limits GBV survivors' access to justice.**

When women choose to report GBV, often (particularly in IPV cases) they leave their home for their own safety while the proceedings unfold. Women may have trouble supporting themselves financially while removed from their marital home, and sometimes survivors will stay with their parents while this takes place. Informants in this study described how access to transportation to and from the court can also be a challenge, especially in contexts like PNG where there is a substantial divide between urban and rural settings.

The cost of a lawyer was identified as an additional barrier for GBV survivors seeking justice. Some women's organizations offer pro bono access to lawyers for GBV survivors (such as the Federation of Women Lawyers, Women Development Group, and Steward Women in South Sudan). When a survivor is able to obtain a lawyer, there can still be

challenges with lawyers' capacity related to GBV given the differences in lawyers' legal background and education. In the Philippines, it is hard to find lawyers who will handle cases of GBV and support the prosecution of the case. If a lawyer is not available, CHRP highlights that the case will then rely solely on the prosecutor, who may trivialize the violence, be impatient with a survivor's reluctance to pursue the case and fail to understand that survivors of violence may second guess decisions to file a case. Some perpetrators avail of the legal services of the Public Attorney's Office. In cases where the perpetrator has approached the Public Attorney's Office first, the Office is precluded from offering services to the survivor, if requested.

## DISTRUST OF FORMAL INSTITUTIONS

**Survivors' distrust of state justice institutions can also hinder willingness to report GBV.** For example, though Honduras has a relatively strong legal framework in place, a survey conducted by OXFAM found that over half of those surveyed do not trust the Prosecutor's Office (56 per cent), the Supreme Court of Justice (56 per cent) or the National Police (59 per cent).<sup>284</sup> A key barrier to trust in institutions is the high level of impunity in the resolution of cases related to GBV and femicide, as survivors do not believe that they will receive proper protection or that their access to justice is guaranteed.<sup>285</sup> As one key informant shared:

*"The problem is that small reforms are made, which allows the Government to send a message: we have a protocol for action on femicide, we've included*

*the definition of femicide in the penal code, we have a special prosecutor's office for women. But the special prosecutor's office for women has fewer resources, fewer capacities, and fewer powers, and femicides are investigated together with other types of unspecialized crimes. Behind all this is a structure that maintains the situation: that re-victimizes, that does not investigate, that maintains impunity, that does not have enough resources."*

- Key informant from a CSO in Honduras

Similarly, in interviews with civil society actors for this study, several informants were of the opinion that South Sudanese survivors also lack faith in the criminal justice system. This is in part because many of the same actors who are now enforcing justice through the formal system committed acts of GBV during the conflict. Informants report seeing very few GBV perpetrators facing any sort of meaningful accountability through the formal justice system, further disincentivizing survivors to report.

## LIMITED KNOWLEDGE OF LAWS AND SERVICES

*"Women who live in villages do not even have information about their basic rights. They are depending on men, they don't know about organizations that work for women and they are afraid to go to the police*

*because of male dominance, they don't trust the police."*

- Key informant, government official in Afghanistan

**Survivors may be unaware of the full scope of rights women and girls enjoy under the law.** In Tunisia, in spite of public awareness campaigns and increased advocacy during global milestones such as the 16 Days of Activism against GBV, there is low awareness among survivors of laws available to protect them (including the crucial Law #58, passed in 2017).

**Knowledge of where and how to report GBV is also a constraint.** This was reported across the focus country contexts. For example, in South Sudan, where illiteracy rates across the country are high, survivors face additional challenges in understanding laws or services that could support them. Sometimes, if a girl is educated, her bride price may be reduced in South Sudan, so parents may forgo furthering their daughters' education as a means of maintaining bride price. Some parents may view other risks in sending daughters to school:

*"Girls are restricted from education simply because their parents think that if they are taken to school, they will get spoilt and therefore will not bring the expected dowry to the family. Girls who grow up in cattle camps are expected to be married for a lot of cows."*

- Key informant in Rumbek<sup>286</sup>

## INTERSECTING IDENTITIES AND BARRIERS

**Gender is not the only identity that might influence whether a survivor reports violence.** Considerable socio-cultural barriers to accessing essential services were also highlighted by respondents, especially for women and girls who suffer from intersecting forms of discrimination. In Honduras, rural, indigenous and Afro-Honduran women and girls, individuals with disabilities, migrants, and those subject to discrimination because of their sexual orientation or gender identity often face tremendous challenges accessing justice for GBV. In Tunisia, migrants, disabled women, sex workers, domestic workers and other especially vulnerable populations are offered little specialized protection from violence. Survivors who live in remote and rural areas of PNG, the Philippines and South Sudan also face challenges physically accessing justice systems.

In the Philippines, as in many other countries, most complaints have to be filed and processed through face-to-face interaction. This is a major challenge for survivors that live in rural areas and for those with accessibility challenges. For example, there are very few sign language interpreters and presenting cases involving deaf people in court can be a major challenge as the credibility of the interpreter has to be vetted. These issues have been further compounded during the COVID-19 pandemic.

## JUSTICE CONSTRAINTS IN PRACTICE: POLICE, PROSECUTION AND THE JUDICIARY

The police are one of the first contacts GBV survivors may make when accessing formal justice. If a survivor moves forward with a complaint, the prosecution and the judiciary also play a key role in the survivor's experience of access to justice.

There are a variety of challenges associated with justice actors' response to GBV survivors. These include mistreatment of survivors by police, lack of follow-up with survivors, lack of resources, evidentiary challenges and lack of forensic capacity, poor information systems, unresponsive police procedure, mediation, low penalties, impunity, and corruption and lack of judicial independence.

### MISTREATMENT OR LACK OF SENSITIVITY IN THE TREATMENT OF SURVIVORS

*"One issue is that the police lack credibility. Sometimes survivors are afraid to press charges because they are not treated well."*

- Key informant from a CSO in Honduras

**Across contexts, there is a reported lack of a gender perspective among key justice actors, which can discourage reporting.** In Honduras, patriarchal cultural patterns and the tendency to normalize violence against women persist among civil servants and institutional decision-makers. Key

informants mentioned that in cases of sexual violence, women have difficulty reporting, because they are often blamed for it due to the way they look or dress. In cases of domestic violence, women are told that they should work things out with their husbands. Further, when survivors drop cases, they can at times experience victim-blaming from the police for not continuing to follow-up.

Women's organizations in Honduras find that **many justice providers are reluctant to accept that domestic violence is as serious a crime as other criminal matters.**<sup>287</sup> The Inter-American Commission on Human Rights has pointed out the low capacities of security agents and justice actors and has recommended that they be strengthened in order to offer timely responses in the context of the pandemic.<sup>288</sup>

*"It is necessary to make these reforms, include these [new] definitions, but that does not help you if the prosecutor who is going to investigate this crime has a conservative mentality and blames women for their own murder or rape."*

- Key informant from a CSO in Honduras

Despite training, police do not always handle such cases with sensitivity and specialized attention to the human rights of survivors. Cases in Honduras were cited in which police actively collaborated with the perpetrators, either by alerting them to the survivor's complaints or taking bribes from them. The frequent turnover of staff can make it difficult to institutionalize new behaviours:

*"The capacities that have been generated in these processes in the prosecution and the police are lost when the trained people are transferred to other offices, and this is a setback for the specialized treatment of the issue of [GBV]."*

- Key informant from the Honduran judiciary

Mistreatment of survivors and their families by some key justice actors was also reported in South Sudan. There is widespread mistrust and fear of the police given the crimes (including GBV) perpetrated by armed actors during the conflict. Survivors have reported negative experiences with the male-dominated police force in South Sudan, including being asked invasive, embarrassing questions while reporting, or being victim-blamed. As one informant from a CSO said: "(Police) turn the whole issue into a mockery."

Police officers do not always understand the laws relating to GBV, the needed support for survivors, and key considerations for dealing with GBV survivors. For example, there is often little privacy in South Sudanese police stations for survivors to share their experiences.

Similar issues were also highlighted in Afghanistan, where informants shared incidences of unprofessional behaviour by justice actors, even those who had received training:

*“A woman went to the police for reporting her case. She was beaten by her husband and lost her back teeth. And the police replied – you lost your back teeth, which is not affecting your beauty – and asked her to laugh to see if the lost teeth are visible or not.”*

- Key Informant in the Afghan government

Police brutality and years of corruption have also plagued PNG, which has seen a progressive erosion of public trust in the police. Informants report that incidents of police raping survivors of violence are still reported in the country, though accountability has improved with more people being arrested and charged over rape, murder and corruption.

## LACK OF FOLLOW-UP

Justice actors' failure to follow up with GBV survivors' cases can have serious consequences. In Honduras, complaints can face expiration after a survivor files a complaint, or someone files a complaint on behalf of the survivor. Although the cases are prosecuted ex officio, if the survivor does not follow up, often no further actions will be taken. According to a member of the judiciary system: *“More than 40 per cent of complaints are not followed up for different reasons.”*

After six months, the complaint expires, and no further follow-up takes place unless the survivor returns to renew the

process. The Prosecutor's Office is in charge of the follow-up mechanism for complaints and is supposed to follow-up if the survivor refuses to continue the process.

*“Sometimes when they give her the appointment to go to court, the survivor no longer follows up. They do not for many reasons, because she does not have the resources to arrive alone, because they already took the aggressor out of their house, or they have already reconciled with the aggressor in the famous ‘cycle of violence’. And the State does not follow up to find out why she did not arrive. No, the State keeps the papers and says well, they did not come, we are going to give this case some time to see if she comes back. But the woman will arrive when there are other manifestations of violence. Then another file is opened for the next act of violence and thus we accumulate files.”*

- Key informant from the Honduran judiciary

This lack of follow-up with survivors, who are already facing a host of structural and social barriers, allows justice to slip through the cracks.

## LACK OF RESOURCES

**Justice actors can lack the needed resources to be effective in offering GBV survivors justice. In PNG, for example, the police force is under-resourced and under-trained.** The police to population ratio is very low, with only an estimated total of 7,000 police officers for a population of over



7.3 million.<sup>289</sup> Of these police officers, only 107 are Family and Sexual Violence Unit (FSVU) officers, charged with preventing, protecting and investigating family and sexual violence cases.<sup>290</sup> The complex geographic environment in PNG, including populations who live in remote areas of the country, poses an additional layer of challenge to the under-resourced force. For example, an informant shared that because Karimui-Nomane District in Chimbu Province is only accessible by plane, if there is an accusation or act of violence due to sorcery, it is difficult for the police to travel to the scene. Key informant interviews with police in the Eastern Highlands Province found that police often hear about the cases only when something else has happened such as a tribal fight. The leaders of the tribe seek help from the police to quell the tribal fight and when the district police ask how the fight started, they will then say there was a SARV killing. Even when police have road access, fuel is often limited, and survivors or human rights defenders may have to cover the costs of fuel.

In South Sudan, one area where additional resources are needed is language training for lawyers. Informants shared that many of the lawyers in South Sudan are fluent in Arabic, having been trained in Sudan. The operating/official language of the justice system and laws in South Sudan is English. This adds a layer of complexity to survivors' access to justice.

## **UNRESPONSIVE POLICE PROCEDURES**

In South Sudan, police officers are a critical contact for GBV survivors, given their role in administering Form 8 – a form filled out by these officers in

the wake of violence when a survivor reports GBV. This procedure has been a significant barrier to survivors' access to justice, as it is often necessary to pursuing justice through the courts or accessing related health services. Historically, since having police complete the form costs money, women who could not pay the fee could not get the form. Moreover, illiteracy, which is a significant problem across South Sudan, particularly for women and girls, makes completing the form difficult for survivors. Many women do not proceed with completing Form 8 and thus are prevented from accessing health services and pursuing justice through the court. A successful campaign by advocates within and outside the Government has removed the fee associated with Form 8. However, confusion remains over whether the form costs money, and whether it is necessary to receive health services, making Form 8 a persistent barrier to accessing justice.

## **EVIDENTIARY CHALLENGES AND LACK OF FORENSIC CAPACITY**

Collection of forensic and other evidence is crucial to GBV survivors' access to justice. However, there are a number of challenges associated with collecting evidence and proving the elements of GBV crimes in a justice context. For example, in Honduras, the presence of gender inequality has to be established to prove femicide.

Specialist capacity for collecting forensic evidence can also be limited, posing an evidentiary challenge, and professionals conducting forensic examinations are often insufficiently trained and/or lack gender sensitivity.<sup>291</sup> In some instances, there is inability or unwillingness to provide urgent clinical and medical care, such as emergency contraception

or prophylaxis for sexually transmitted diseases. In 2015, WHO and UNODC implemented the project/programme 'Strengthening Medico-Legal Services in Conflict Affected Areas', which aimed to strengthen national capacity in collection of evidence in sexual violence cases in fragile and conflict settings.<sup>292</sup>

Forensic testing capability poses a significant challenge for GBV survivors in conflict-affected South Sudan. Because there is no ability for forensic testing within the country, any forensic testing that is performed to contribute evidence to a GBV court case must be sent outside the country. This has made collecting forensic evidence to support GBV court cases more challenging. One informant, however, cautioned against centring forensic testing as a primary gap to be filled, given the substantial challenges in basic GBV response services. In fact, the vast majority of GBV survivors don't pursue justice to the point where they are accessing forensic testing for use as evidence in a case, so a focus on forensic testing may be missing more basic gaps that need to be filled.

In PNG, the unique challenge of SARV presents barriers to evidence collection. Key informants highlighted that police are usually afraid of what the community will do to them if they try to intervene in a sorcery accusation as they will put themselves in opposition to a whole community. One major challenge with prosecuting SARV is that there are rarely any witnesses willing to step forward out of fear of being persecuted. Often police will arrive and be witnesses to SARV occurring. Advocacy efforts are underway within the Public Prosecutor's Office to consider whether the police can use their smartphones to take footage of crime scenes when they arrive. This footage could then be used as evidence in

court and may mitigate the challenge of witnesses refusing to come forward.

The application of virginity tests as evidence for proving some GBV crimes was raised as a key concern in Afghanistan. Though article 640 of the Afghan penal code criminalizes virginity examinations, the law permits a virginity examination if conducted with the consent of the victim, or a court order. A sense of lack of alternatives to prove some GBV crimes emerged, as one member of the judiciary shared:

*"If the virginity test doesn't happen, what would be the alternative for proving rape cases? There is not any alternative for proving rape cases and it would be good that doctors provide an alternative. Courts only take a decision based on the virginity test because the forensic medicine provide information about virginity and sperm."*

- Key informant member of the Afghan judiciary

## POOR INFORMATION SYSTEMS AND DEARTH OF DATA

*"It is about making the problem visible."*

- Key informant in South Sudan

Poor information systems and a lack of data, including administrative data from justice actors, hinder GBV survivors' ability to access justice. Furthermore, lack of data and monitoring and evaluation mechanisms make it challenging to track national trends and respond to GBV.

Informants shared that because the Philippines does not have a harmonized, systematic GBV data system, understanding GBV prevalence in the Philippines is challenging. There are myriad data systems, but there is lack of coordination and harmonization, making it challenging to understand the full scope of the problem. Most national level data is qualitative or in the form of case studies. For example, the Philippine National Police keeps their own statistics, and the PPNP Women and Children Protection Centre documents the prevalence of reported violence against women and children cases. UN Women conducts rapid gender assessments. The Inter-Agency Council on Violence Against Women and their Children, Inter-Agency Council Against Trafficking, and gender and migration actors also each have their respective data systems.

In South Sudan, there is a dearth of rigorously collected data on GBV. Though there have been some national surveys,<sup>293</sup> additional data is needed to build a comprehensive picture, including around the particular vulnerabilities of different groups of women and girls, and how their needs can be better addressed. One informant, however, warned against the “*prevalence red herring*”: when donors fixate on collecting prevalence data prior to designing and implementing programmes to address GBV, this can be a barrier and delay to implementing much-needed programming. Very few data on GBV are digitized in South Sudan, and most of it is collected by international NGOs as opposed to local organizations. Very few articles and publications about GBV in South Sudan are authored by South Sudanese women. There is a desire for South Sudanese women to share their

own stories and build their own archive. As one key informant from a CSO said, “*I get stressed when I have to cite something from an international NGO*”, meaning that she would much prefer to be citing the work of South Sudan researchers, practitioners and/or activists. Data collection in South Sudan needs more support in centring and amplifying the voices of South Sudanese women and girls and strengthening their capacity to collect the evidence to improve programmes and institutions.

## MEDIATION

The use of mediation as an alternative to criminal prosecution to resolve GBV cases was noted in several focus countries. In PNG, the role of village courts through the customary justice system is to maintain peace and order in communities, and village court magistrates primarily use mediation to deal with customary law or other non-criminal cases.

Although mediation between a couple is permitted in Honduras under article 45 of the criminal procedure code,<sup>294</sup> the same article states that the judge should not urge reconciliation in cases of GBV or in cases where violence is committed against minors and individuals with disabilities. However, if the victim requests mediation, the judge must permit it, ensuring that neither party is subject to inequality or vulnerability. In most cases, proving inequality or vulnerability is very hard to do, and it usually does not end the situation of violence, particularly when organized crime is involved.

As one key informant shared:

*“In general, reconciliation between the victim and the accused is used to resolve the case, but it does not stop the violence. In several cases we see that it is a repetitive circle of violence and that [reconciliation] does not have any effect on the aggressor continuing to exercise violence.”*

- Key informant from the Honduran Government

A key informant in Afghanistan provided insights on mediation (sometimes facilitated by government institutions and NGOs that address violence) in Afghanistan:

*“Unstandardized mediation is affecting the survivors, which will result in them facing violence again. I am not against this mediation, sometimes it works, but mostly this unstandardized mediation itself is the reason for violence against women. In our society individuals by the name of Scholar, or Head of Community, who don't have any licences, are doing mediation in the cases of violence against women. If the process of mediation is specified, and certain organizations are assigned for mediation, that would be a fine way to handle the cases and do mediations.”*

- Key informant from a CSO in Afghanistan

## IMPUNITY AND INSUFFICIENT PENALTIES

*“There is not only a justice gap, but true immunity and impunity.”*

- Key informant from a CSO in South Sudan

The combination of many of the above circumstances gives rise to a feeling of generalized impunity across many focus contexts. Lack of accountability for perpetrators and insufficient penalties for GBV offences was reported in several focus countries as key barriers to survivors' access to justice.

Despite the undeniable advances made in Honduras, systematic impunity persists in the face of numerous acts of GBV. These deficiencies translate into a very small number of trials and convictions that are pending as compared to a high number of complaints. Women's organizations affirm that 96 per cent of cases of violence, femicides and domestic violence go unpunished.<sup>295</sup> Furthermore, the Electronic Centre for Judicial Documentation and Information<sup>296</sup> demonstrated that in 2019 a total of 15,376 cases of domestic violence were admitted to the Courts of Letters and Peace. However, only half of these (7,053 cases) have a resolution in situ.<sup>297</sup>

In Afghanistan, of the 280 cases of honour killings that the United Nations Assistance Mission in Afghanistan (UNAMA) documented from 2016 to 2017 (two years), only 50 (18 per cent) of the cases resulted in the conviction and imprisonment of the perpetrator.<sup>298</sup> As has happened in the past in Afghanistan, the majority of murder and honour killing cases involving women were not prosecuted. In over one third of the cases

recorded over two years (2016–2017), the police never referred the case to prosecutors.<sup>299</sup>

Penalties for GBV perpetrators are often viewed as insufficient, which demoralizes survivors and chills reporting. However, an informant in South Sudan shared a case where a perpetrator was charged with two rape counts (he had raped two sisters under the age of 18). Though the maximum sentence for rape is 14 years, the perpetrator received an unprecedented 40-year sentence (which included additional years for robbery and possession of a firearm). To the informant's knowledge, this is the longest sentence someone had received for a rape case and is a significant milestone in South Sudan. An informant in a separate study shared the experience of her daughter being abducted by her husband's family, who then sold her into marriage with a violent man for 15 cows. The husband's brother beat the daughter so that she would comply with the marriage. Ultimately, the daughter managed to escape and return home to her mother, who took her to receive medical treatment for her injuries. Although the violent husband and uncle spent time in prison, according to the mother:

*"...they will both be set free. The uncle will pay back the cows, and the husband will pay a fine of one to two cows for mistreating the girl, but the uncle will receive the cows."<sup>300</sup>*

Even when justice is meted out in response to GBV in South Sudan, survivors may not feel like the recipients of that justice.

## CORRUPTION AND LACK OF JUDICIAL INDEPENDENCE

*"Everyone feels insecure, even the Government."*

– Key informant in South Sudan

Corruption in the police forces and judiciary can affect justice responses to GBV survivors. In South Sudan, informants emphasized that personal relationships and patronage take priority over merit in hiring for police. Some former soldiers from the conflict are recruited as police officers and have never been trained as police officers, resulting in uneven implementation of the laws. Additionally, the chain of command (from heads of police at the top, to police managers in the middle, down to police officers on the ground) is weak, so even when there is support around GBV from the heads of police, this does not always translate to effective police response to GBV survivors. The judiciary of South Sudan faces significant challenges with judicial independence and corruption. Judges, like parliamentarians, are appointed rather than elected, thus they are incentivized to please their bosses, hindering their independence and limiting their space to exercise true justice. Even though there is a judicial services commission that is meant to oversee the work of judges, as one informant said, *"...everything is about the decree from the Office of the President."* Further threatening the judiciary's independence is corruption.



Some judges are perceived to have taken bribes to accept cases, or rule a certain way:

*“People are poor...if I have a case today and I have money, maybe I’m on the wrong side, I pay 1000 dollars, or 500 dollars to a judge. He will take it because he is paid less than 100 dollars salary; maybe they are paid like 20 dollars, that’s their salary. They take that...so the independence of the judiciary is in question in South Sudan.”*

– Key informant in South Sudan

Judges in South Sudan have also had their lives threatened and suffered intimidation when refusing to drop certain cases. One key informant shared the story of her own sister, who had been experiencing IPV and living separately from her husband. Her husband came to the home in a military car and took the children away. When the case was working its way through court, the judge had his life threatened because the husband had connections to one of South Sudan’s most powerful military generals. Ultimately, the case was transferred to another judge, and the informant’s sister is still living without her children.

In Afghanistan, prior to the 2021 Taliban takeover, the police and the judiciary were also affected by corruption. Criminal networks infiltrated Afghanistan and worked with political elites to profit off the illicit drug economy. Both police and judiciary members are perceived as having demanded bribes, deferred arrest, and otherwise influenced legal proceedings. A key informant detailed the challenges facing justice actors:

*“The precautionary actions and measures are not sufficient. When the judges and prosecutors are going to provinces for their duty especially in Panjshir, Kapisa, Parwan, Khost and Wardak [provinces] they face many security threats. As they don’t have any personal transport, they are going in public transport which is risky for them. Many judges are also threatened and blackmailed.”*

– Key Informant in the Afghan Government

## THE ROLE OF INFORMAL JUSTICE SYSTEMS IN DELIVERING JUSTICE TO GBV SURVIVORS

Customary and informal justice systems (CIJS) deal with many of the most common justice problems that women face such as family matters, land related disputes and debt disputes, as well as GBV. Therefore, it is important to engage and improve not only formal justice systems but also CIJS, in their various forms. This requires understanding the challenges that are presented by CIJS, which are multifold: CIJS tend to prioritize community cohesion or reconciliation, rather than women’s rights. A CIJS builds its legitimacy and authority from culture and tradition, which often may reflect social norms that may not be gender equal. In fact, some forms of violence (particularly harmful practices such as so-called honour killings, sorcery related violence, female genital mutilation, and others) are sometimes justified on the basis of culture. Proceedings adopted by CIJS may also violate women’s rights, such as not treating women or their testimony on

an equal footing with men, having public hearings in GBV cases and limiting the participation or representation of women in the proceedings.<sup>301</sup>

Moreover, disadvantages faced by women while accessing justice are further compounded by intersecting marginalization such as poverty, ethnic status, disabilities, gender or sexual identities.

Informal justice systems coexist with formal justice systems in South Sudan, PNG and Afghanistan, and informal justice is also recognized in the Philippines.

*“Traditional court is always negative for women.”*

– Key informant from a CSO in South Sudan

In South Sudan customary law is the most common form of conflict resolution, even though the customary system is not meant to address GBV. The Local Government Act, 2009,<sup>302</sup> prevents the customary system from adjudicating criminal cases, and violence is considered criminal.

Furthermore, the customary system technically answers to the formal justice system, with customary decisions able to be appealed to the statutory courts. However, in practice, informants report that few seem to realize this is the case and there is little coordination between the two systems. The customary system tends to marginalize the needs of GBV survivors, and many survivors do not feel satisfied by the customary process. The latter is patriarchal, and in some ways influenced by sharia law, a vestige of South Sudan’s relationship

to Sudan. Under this traditional system, local chiefs, or Boma chiefs, lead the courts. These chiefs can reflect harmful patriarchal attitudes present in South Sudanese society:

*“It is common in our custom to beat a woman when she has made a mistake – not to the extent of killing her completely, but to discipline her.”*

(Male chief in Rumbek)<sup>303</sup>

Women and girls who are raped may be forced to marry their perpetrator. Women seeking justice or protection from IPV may be forced to return to the husband or family, and women seeking divorce are expected to pay back their bride price, which is often economically infeasible. Women may also lose access to their children if they pursue divorce.<sup>304</sup>

In PNG, GBV survivors access justice within a mixed legal system that recognizes formal and customary laws, as stipulated in the Constitution and Underlying Law Act, 2000. Although the Family Protection Act clarifies the roles of actors within the dual justice system [e.g., village court magistrates are authorized to provide interim protection orders (IPOs) to women experiencing domestic violence and to refer breaches to the district court], actors within customary systems do not always have a clear understanding of their mandate under the law:

*“A lot of the new laws, I learnt from the radio, some of them are the sorcery act, family act, cyber law, polygamy law. I have not got direct training.”*

– Village court magistrate in PNG<sup>305</sup>

Lack of training becomes a serious issue when village court magistrates start mediating criminal cases involving physical and sexual violence. For example, key informants noted that when the Sorcery Act was repealed in 2013, the provisions in the Village Court Act that allow village courts to address sorcery concerns were not removed. Village court magistrates are only meant to address accusations of sorcery, and not SARV. However, because the belief in sorcery is so prevalent, many local leaders, church communities, and village court officials address cases of extreme violence and killing. This can lead to negative outcomes for the accused:

*“The overwhelming thing that survivors want is just for people to stop thinking they are a sorcerer and to be able to go back and live a normal life in their community.”*

– Key informant in PNG

Survivors of SARV often must move away from their original community, and it can take decades before they can return. This is where the role of community leaders and village courts is crucial: to ensure that those accused of sorcery are not further stigmatized or victimized, and don't have to relocate (in some instances to a different province). In recent years, with the spread of social media and technology, sorcery accusations follow people even when they relocate, which enables the risk of violence to continue.

In Afghanistan, most domestic violence cases are resolved within families by relatives through jirgas, or customary gathers of elders informally empowered to take decisions for families or individuals, often around resolution of

disputes or community issues. Once a survivor decides to present a complaint, elders and male family members of both the wife and husband form a jirga; a decision is made by a mediator and both the wife and husband must respect it. In such cases, the family jirga will usually convince both husband and wife to reconcile, and advise the woman to endure any violence. The jirga does not typically respect the confidentiality of cases.

*“One challenge that women face is that their families and society will not allow them to seek formal justice. And in jirgas they are forcing women to forgive the perpetrator and not to refer her case to the justice sector. The decisions (of jirgas) that are based on customary laws will take them back to violence.”*

– Key informant in the Government of Afghanistan

*“The challenges and problems at justice sectors causes families to go for customary law, as it is less time consuming. But the problem with customary law is that it is biased towards men rather than women. Most of the times, women are not involved, and decisions are taken without their presence.”*

– Key informant from a CSO in Afghanistan

The Philippines is home to tens of millions of indigenous peoples, and their right to self-governance is guaranteed by the Indigenous Peoples Rights Act. Various indigenous cultural communities treat GBV cases differently (in terms of defining what constitutes GBV and the penalties that attach to their commission, if any), and may address GBV in a way that differs from state law. Often, as in other settings, preservation of the family and community is prioritized in customary justice. One key informant shared particular challenges of customary justice in an indigenous community:

*“A challenge is the legal system of the Moro, particularly the unwritten practices of the Moro people. They have an umpungan (“counsellor”). When the woman goes to the counsellor, she is usually told that she needs to go back to her husband. It is an area for legal pluralism because interpretation is left to the discretion of the umpungan, depending on how they interpret the practices. Thus, there is a need for different approaches for Moro and IPs.”*

- Key informant from a government body in the Philippines

## INNOVATIVE PRACTICES TO INCREASE ACCESS TO JUSTICE

Considerable investment has been made by donors to end GBV, including in focus countries. Although emerging results are positive in some countries, the recent experience in Afghanistan is a testament to the fragility of these gains.

Below are some examples of innovative approaches to increase access to justice for GBV survivors.

**Box 14:** Overview of specialized GBV justice mechanisms in six countries

|                                                              | Afghanistan<br>(before 15 August 2021)                                   | Honduras                                                                                    | PNG                                                          | Philippines                                                                                                         | South Sudan                                                       | Tunisia                                                |
|--------------------------------------------------------------|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------|
| <b>Specialised police or prosecution units</b>               | Yes                                                                      | Yes                                                                                         | Yes                                                          | Yes                                                                                                                 | Yes                                                               | Yes                                                    |
| <b>Specialised GBV courts</b>                                | Yes                                                                      | Yes                                                                                         | No                                                           | No                                                                                                                  | Yes                                                               | No                                                     |
| <b>Protection orders available to survivors</b>              | No                                                                       | Yes                                                                                         | Yes                                                          | Yes                                                                                                                 | No                                                                | Yes                                                    |
| <b>Specialized mechanisms for data collection and review</b> | Yes,<br>elimination of violence against women database mandated by LEVAW | Yes,<br>National Observatory on Violence, at the National Autonomous University of Honduras | Yes,<br>collected by the FSVUs of the Royal PNG Constabulary | Yes,<br>developed by the Inter-Agency Council on Violence against Women and their Children, but poorly systematized | Yes,<br>incipient efforts using GBV Information Management System | Yes,<br>National Observatory on Violence Against Women |



## SPECIALIZED POLICE AND PROSECUTION UNITS

Specialized police and prosecution units can contribute to enhancing the visibility of GBV and provide key entry points for women seeking to access the justice system.<sup>306</sup> One of these approaches is women's police stations, which are primarily staffed by women and serve functions that regular police stations do, like obtaining protective orders in cases of domestic violence. Many women's police stations have been established in Latin America (with Brazil having the largest number focused on GBV), as well as in countries such as India, Liberia, Philippines, Sierra Leone, South Africa and Uganda. However, women still face significant challenges in approaching women's police stations, including lack of physical access (especially for women in rural areas) and limited language skills. A women's police station also does not guarantee quality service to survivors, as an all-women staff may still perpetuate harmful gender norms. Gaps in capacity and resources also impede the delivery of quality services, negatively impacting the experience of survivors.<sup>307</sup> For women's police stations to be successful, they must be adequately funded, closely monitored, and made accessible to rural and other hard to reach populations.

Many countries of focus in this research have established specialized police units and protocols to deal with GBV cases. Created in 2008 by the Royal PNG Constabulary, Family and Sexual Violence Units are a specialized police mechanism mandated to prevent, protect and investigate family and sexual violence offences and respond to the needs of survivors. Currently, FSVUs exist in 25 police stations across PNG and are viewed as the main frontline police

service for GBV survivors.<sup>308</sup>

FSVUs primarily address minor criminal offences. FSVUs deal with a considerable number of civil matters that relate to family or domestic discord, including divorce and infidelity. In addition, FSVUs are part of a referral network that provides key services for women experiencing violence and play a vital role in informing survivors about FPOs. A study on FPOs found that IPO applicants are most likely to hear about FPOs from the police (including FSVUs).<sup>309</sup>

Though FSVUs are a critical resource for GBV survivors in PNG, challenges exist. An evaluation of FSVUs in 2015 found that few complaints brought to the FSVU were investigated and even fewer prosecuted due to lack of resources, case overload, withdrawal of complaints to accept compensation in lieu of adjudication, and the lack of interest from some police personnel.<sup>310</sup> Variability in service quality from officer to officer at FSVUs can result in an uneven response to survivors. FSVUs are also not currently recognized as a part of the formal structure of the Royal PNG Constabulary, though a proposal to formalize their position is ongoing. One key informant working closely with the FSVUs commented, *"even if FSVUs are made mainstream in the police structure, they would still be dismissed as dealing with women's problems."* This indicates a need to address the negative beliefs and attitudes of police, including further training on the rights of women, and the responsibilities of police as duty bearers.

The COVID-19 pandemic has had an impact on survivors accessing justice, especially in the PNG Highlands where, when women went to the FSVUs, police officers were often unavailable as

they were out in communities raising awareness about the virus in the local languages.

In South Sudan, Special Protection Units are available at some police stations and have been a feature of policing since before South Sudan's independence.<sup>311</sup> These units are GBV desks staffed with personnel trained to work with GBV survivors. There are some challenges in ensuring the space in the police station allocated for survivors is used appropriately by police. Key informants noted occasions when police officers had used designated Special Protection Unit space for storage or offices, in some cases because they were not being used.

They face similar challenges to those of the FSVUs in PNG, such as lack of resources, failure to be systematically included within the police infrastructure, and uneven quality of service from police officers.

Prosecutors play a key role in ensuring that effective investigations, including evidence collection, have taken place. Specialized prosecution units investigate and prosecute cases of violence against women, support survivors and fast-track cases. If adequately resourced, specialized prosecution units (especially those associated with specialized courts and police units) can increase prosecutions and convictions and improve case management.

However, there are challenges associated with specialized units such as marginalization within general prosecution services, heavy reliance on sustained financial resources, which may not always be available, and the fact that most of them are urban centric. Specialized prosecution units can take many forms,<sup>312</sup> including (1) specialized justice professionals to complement

the work of specialized courts (e.g. the Sexual Offences Courts in South Africa, which are staffed by police, investigators, social workers and health care professionals); (2) multidisciplinary teams with advocates, paralegals, investigators etc.; or (3) specialized prosecution units with specially trained prosecutors such as the former Elimination of Violence Against Women Units under the Attorney General's Office in Afghanistan.<sup>313</sup>

Honduras has created several special entities to investigate and prosecute crimes against women and girls. The Special Prosecutor's Office for Women's Protection in Honduras addresses domestic and sexual violence cases, while the Special Prosecutor's Office for Crimes against Life investigates all homicides, including femicides and murders of women that do not meet the criteria for femicide. Additionally, informants shared information about the Specialized Comprehensive Care Modules<sup>314</sup> in the Public Prosecutor's Office, which aim to ensure the rights of survivors of VAWG throughout the justice process, with special attention to vulnerable groups such as children, adults, disabled persons, ethnic communities and the LGBTQI+ population.

## **SPECIALIZED GBV COURTS**

In some circumstances, specialized GBV courts are recommended to mitigate the challenges faced by GBV survivors in accessing regular courts. These challenges can include divergent legal domains and procedures that lead to fragmented remedies, gender insensitivity of justice actors, and lengthy and costly court processes due to the overburdened justice system.

Specialized GBV courts have the potential for greater expediency, higher gender sensitivity, better safety and satisfaction outcomes for survivors, and enhanced accountability. Specialized courts can also provide specialized features, such as closed session hearings. However, these courts often face the same challenges that regular courts face, including lack of trust in the court by survivors, geographical distance and high fees, which limit survivor access.

Several countries have piloted special GBV courts, such as Honduras, which established the Special Courts for Domestic Violence across some departments.

South Sudan, with its complex conflict and humanitarian setting, offers interesting fledgling examples of specialized courts for GBV survivors. The GBV and Juvenile Court, established by the R-ARCSS (peace agreement) is the first specialized court in South Sudan to address GBV. The GBV Court (as it was referred to by key informants) has been established by the United Nations Development Programme (UNDP) and other United Nations partners and is a result of substantial advocacy from the GBV Sub-Cluster. Informants shared how it is focused primarily on conflict-related sexual violence (CRSV), which means that addressing other forms of GBV (like IPV) remains a justice gap.

The GBV Court is designed to be gender-sensitive and staffed with well-trained personnel, ensuring privacy for survivors during the court process. Though the GBV Court is currently operational, it faces substantial delays in processing cases due to bureaucracy. One key informant noted that approximately 6,000 cases were waiting to be tried as of 2020, many of which are still pending. An additional

tension is that many perpetrators of CRSV were armed military actors. The military has a separate justice system for adjudicating over crimes, creating ambiguity regarding jurisdiction. Informants called for better monitoring of the GBV Court to ensure it meets survivors' needs.

A hybrid court addressing CRSV was also established through Chapter V of the R-ARCSS but has not yet come into force. Once available, the hybrid court will be headed by international legal experts and several national lawyers and judges. It will be based outside South Sudan to provide an additional level of safety. The hybrid court aims to be gender-sensitive and will have several women on the legal team.

Mobile courts have also been established across South Sudan to enhance regional accessibility to justice. These courts were established by UNDP and are supported by United Nations partners. Mobile courts are vital to supporting GBV survivors, as most rural locations do not have ready access to the formal justice system. Key informants highlighted two mobile courts of particular importance: a sexual and gender-based violence court under the United Nations Protection of Civilians camps, and a mobile court located in Eastern Equatoria supported by UNDP and Steward Women, a CSO, in partnership with the National Alliance of Women Lawyers. Steward Women litigates most of its cases through the mobile courts, in addition to offering transportation, meals and security for judges, prisoners and survivors.

## **HUMANITARIAN SECTOR APPROACHES TO ADDRESSING GBV**

The humanitarian sector has developed approaches to strengthening access to justice in the midst of complex conflict and humanitarian contexts.

South Sudan offers an example of this humanitarian approach through the United Nations Mission in South Sudan (UNMISS). UNMISS was created in the immediate wake of South Sudan's independence in 2011 for the purposes of protecting civilians, promoting and maintaining peace, addressing humanitarian needs, and documenting human rights violations. Established by the United Nations Security Council originally with a one-year mandate, it has been consecutively renewed given ongoing security and humanitarian concerns in the country.<sup>315</sup>

Critical life-saving measures were taken by UNMISS during civil conflicts that have erupted since independence, including the establishment of Protection of Civilians sites, which sheltered tens of thousands of South Sudanese citizens fleeing violence.<sup>316</sup> As the security situation has recently improved since the heights of the conflict, UNMISS began the process of withdrawing troops from these sites in 2020.<sup>317</sup> Informants described the key role UNMISS has played in connecting GBV survivors with justice, including offering transportation of legal experts to survivors in more rural areas and the utilization of the mobile courts for GBV survivors. UNMISS also worked with UNDP to establish the first GBV Court in South Sudan (in Juba) and conducts training of key justice actors on juvenile issues.<sup>318</sup>

However, given the transitory nature of UNMISS' mandate, one informant from a CSO expressed fear that women may be left unprotected, or unable to access the courts, if UNMISS were to shut down. The mandate of UNMISS is also narrowly focused on humanitarian action as opposed to development activities. Though this narrow scope of work is not a requirement of other United Nations and NGO actors working in South Sudan, other actors have followed UNMISS' lead, also limiting their funded work to humanitarian activity. This has obstructed support for the strengthening of justice institutions and the capacity of justice actors, and the implementation of GBV-related laws.<sup>319</sup>

The GBV Sub-Cluster is also a crucial actor in GBV prevention and response in South Sudan. The GBV Sub-Cluster is a function of the Global Protection Cluster, a network of multilateral, NGO and international NGO actors who are engaged during humanitarian emergencies.<sup>320</sup> The GBV Sub-Cluster is the coordinating body that works across sectors to ensure scale-up of GBV services across the country, including legal services. The GBV Sub-Cluster has also established a Rule of Law Technical Reference Group, led by Steward Women. This innovative group works to protect women and girls and strengthen access to justice and services for survivors. They have improved coordination, built justice capacity, and strengthened the rule of law. During COVID-19, the Sub-Cluster used an online platform for capacity building efforts across all 10 states of South Sudan so their work would not be impeded by the pandemic.

Informants shared how the protection and humanitarian lenses through which GBV is addressed by humanitarian actors can complicate access to justice for

survivors. While protection colleagues are often positive partners in GBV advocacy, they have a tendency to apply a more general protection lens to justice interventions, rather than a GBV- or justice-specific lens. Key actors may narrowly define their mandates around humanitarian programming. This can limit the engagement of important actors in strengthening access to justice. Indeed, the GBV Sub-Cluster arises from the Global Protection infrastructure, whose mandate is tied to humanitarian emergencies. Greater effort should be made to draw the link between humanitarian and development needs, with access to justice for GBV survivors crucial to both sets of goals.

Additionally, given the complexity and depth of the humanitarian challenges in the focus countries and beyond, needs that are perceived as more urgent or lifesaving can be prioritized over providing an adequate GBV and justice response. Even when funding is dedicated to GBV response, this funding is often not given to local organizations who are closest to the needs of survivors. Informants stressed the importance of strengthening the local organizations that are most familiar with the context and survivor needs, with large international actors playing more of a supportive, capacity strengthening role.

## LEGAL AID, PARALEGALS AND OTHER COMMUNITY-BASED ACCOMPANIMENTS AND ACCESS TO JUSTICE SUPPORT

*“The problem with the justice sector is that when a GBV survivor wants to report violence they face many challenges, the first being not having access to a lawyer, which is very common in the provinces.”*

Key informant from a CSO in Afghanistan

Legal aid is necessary to enable survivors who cannot afford private lawyers to receive representation and support in navigating court processes, as well as to achieve better legal outcomes and break the cycle of GBV.<sup>321</sup> Often in low- and middle-income countries, NGOs offer legal aid. Steward Women in South Sudan has created four legal aid clinics in-country to support survivors in legal decision-making and access to services, and they litigated the first child marriage case in South Sudan in 2019 (within the GBV Sub-Cluster). Even with these efforts, legal aid work remains challenging, and most survivors have to pay out of pocket if they wish to receive representation.<sup>322</sup> This dearth of experienced legal representation available to GBV survivors hinders their access to justice.

Sometimes, publicly funded programmes offer legal aid, as in Tunisia where there is a legal aid office in every court. However, this system often fails to function and serve survivors as intended. In the Philippines, UN Women, the International Commission of Jurists and the Office of the United Nations High Commissioner for Human Rights

(OHCHR) are implementing a five-year programme to address this issue: Enhancing Women's Access to Justice in Asia and the Pacific.<sup>323</sup> This programme is meant to bridge the gap between formal and informal systems through women's empowerment. It includes paralegal trainings with women leaders in Quezon City and Davao City to increase their knowledge about the various GBV laws and boost the capacities of women in communities to strengthen survivors' access to justice.

Community paralegals offer a unique opportunity to strengthen GBV survivors' access to justice. Though paralegals do not operate as lawyers, they often work under the guidance of a trained lawyer and can offer substantial support to survivors. Community paralegalism takes a holistic approach to justice, which is often well-suited to the complex web of social issues facing GBV survivors seeking justice, and women are more likely to seek paralegal services than men. Evidence on community paralegals emerging from Africa indicates promising opportunities for survivors. A community paralegal programme in South Sudan, for example, was successful in lobbying the Government to appoint female chiefs in two Boma districts.<sup>324</sup>

## INCREASING ACCESS TO PROTECTION ORDERS

Protection orders are considered an important tool for protecting women. As opposed to mediation, which treats both parties as equal participants in a case of IPV, protection orders are designed to give GBV survivors greater protection. Several countries, including South Sudan, do not currently have a mechanism for survivors to access protection orders. While protection orders show some

promise in countries where they are available to survivors, they are not particularly effective in preventing violence.

In Honduras, protection orders are available to GBV survivors, and some survivors are also eligible for a witness protection programme if their participation in a criminal case endangers them or someone close to them (for example, if they are engaged with organized crime).<sup>325</sup>

However, informants identified two key challenges with protection orders: delays and impunity. Even though the law states that security measures must be applied immediately, lengthy delays are common, and sometimes the survivor must follow up repeatedly for them to be enforced. There are unjustified delays in carrying out the necessary procedures for the arrest of an aggressor, mainly due to a perception that cases of violence against women are not a priority.<sup>326</sup>

*"The law says that security measures must be applied immediately. Complaints must be sent within 24 hours from the Prosecutors Office to the courts, but this does not happen in practice. This causes the woman not to continue the long process, since they want a quick response. If a woman files a complaint, she receives care two or three months later, creating a difficult environment for her."*

- Key informant from a CSO in Honduras



Second, there is no assurance that the aggressor will be arrested right away or that the protective measures will be monitored, which discourages survivors from reporting:

*“There is no unit that monitors whether the aggressor is complying with the protective measures. The survivor has to inform the court if there is a breach, and this is a responsibility that should be exercised by justice operators. In the case of a breach of the protective order, the perpetrator pays a fine in the Attorney General’s Office and nothing happens.”*

- Key informant from the Honduran judiciary

In the Philippines, aside from defining violence against women, the country’s Anti-VAWC Act has introduced protection orders as a means to prevent and safeguard women and their children from further acts of violence.<sup>327</sup> It provides for three types of protection orders: (1) barangay protection order; (2) temporary protection order; and (3) permanent protection order.<sup>328</sup> Any citizen having personal knowledge of the circumstances involving the commission of violence against women and children may file a petition for a protection order<sup>329</sup> or a criminal complaint because violence against women and children is considered a public crime.<sup>330</sup>

The barangay Violence Against Women (VAW) Desks are primarily tasked to assist survivors in securing a barangay protection order and accessing other necessary services.<sup>331</sup> Once an application for a barangay protection order is received, the barangay captain

or councillor must immediately issue it on the same day, after the completion of their ex parte determination.<sup>332</sup>

On the other hand, temporary and permanent protection orders are issued by the family courts or regional trial courts having jurisdiction over the place where the survivor resides.<sup>333</sup> Barangay officials, law enforcers and other government officials are not allowed to mediate, conciliate or influence the survivor from pursuing a barangay protection order, but in practice, incidents of officials insisting on mediation and convincing survivors not to continue with a barangay protection order application because of the perception that the violence was the woman’s fault are not uncommon.<sup>334</sup>

Unlike the protection orders under the Anti-VAWC Act, which has more extensive coverage, including the prohibition to contact the survivor, the restraining order under the Safe Spaces Act, which covers gender-based sexual harassment in streets, public spaces, online, workplaces and educational or training institutions, is limited to directing the perpetrator to stay away from the survivor at a distance specified by the court.<sup>335</sup>

In PNG, there has been an emphasis on making protection orders more accessible to women. This not only increases women's access to justice but also reflects a survivor-centred approach, as the majority of survivors state that they want to stop the violence, not put their partners in jail:

*"A lot of women in the communities say, we don't want our husbands to go to jail, we want him to change."*

– Key informant working with a donor funding mechanism in PNG

Two types of FPOs exist: interim protection orders (IPOs), issued for 30 days with the possibility of a 30-day extension, and longer-term protection orders, imposed for up to two years. Only district court magistrates can issue both IPOs and protection orders. Upon application, FPOs protect survivors from immediate threat of harm. In addition to prohibiting physical violence, FPOs can impose conditions to stop drinking, to stay away from the survivor's residence, or avoid contact. Breaching an order's conditions is a criminal offence with a maximum penalty of up to three years imprisonment and/or a 10,000 kina fine.<sup>336</sup> Although FPOs are considered effective and low-cost tools for protecting women from domestic and family violence, complex challenges around implementation exist.

Approximately one-fifth of the PNG population have heard of IPOs, and more than 80 per cent of IPO applicants felt safer as a result. However, many applicants felt unsure of their safety in the long term, as they face increased risk in the few-week period after an order is served.<sup>337</sup> Further, it takes an average of

14.8 days to issue an IPO, and although a study found that more IPOs are being issued, numbers vary considerably across the provinces. Only six district courts registered more than 100 IPOs in 2018 with very few cases in the Highland provinces, which have some of the highest regional rates of GBV in PNG.<sup>338</sup>

Attrition is also a challenge with protection orders. Among the 67 per cent of clients at a case management organization called Femili PNG who received an IPO, only 39 per cent went on to have the IPO converted into a protection order.<sup>339</sup> The main reasons for attrition were that clients did not return to pick up the applications or did not appear in court. Some women gave up due to lengthy delays, difficulty navigating the complex process and paperwork, regular court adjournments, and the clerk or magistrates being away for weeks at a time. Others cited changes in the husband's behaviour, safety concerns, or the client returning to her home village.

Customary justice processes can also lead to further attrition and affect an applicant's willingness to pursue an FPO. The attitudes and practices of the magistrates also seem to play a big role in obtaining an FPO. Although there is a low burden of proof to issue an IPO (with survivors able to obtain them the same day), magistrates often follow customary mechanisms and prefer to let men have a say in the process. Compliance with protection orders has been promising, with one study on FPOs finding that 70.1 per cent of respondents complied with the IPO, with their respect or fear of the law and acknowledgement that their behaviour had to change being primary deterrents for violence.<sup>340</sup>

*“Once the husbands see that the law is involved, it tends to deter their behaviour.”*

– Key informant working with a donor funding mechanism in PNG

However, available data from the FSVU and district court revealed very few charges or convictions for breaches of FPOs. Of the breaches that go to court, the outcome tends to be fines instead of jail time.

FPOs provide hope to survivors in PNG and might work well in other settings. However, careful training and support for police and village and district court magistrates is needed to ensure that FPOs are used appropriately. Monitoring long-term outcomes is also essential to assess the effectiveness of the intervention over time and protect survivors from future violence.

Key informants for this study who are practising lawyers have clarified that protection orders are also available to survivors of violence in Tunisia, where they are offered for up to six months with the possibility of renewal. The penalty for deliberately violating a protection order is up to one year imprisonment and a fine of 5000 dinars. There are no data as yet on how protection orders are working to increase protection of survivors from violence in Tunisia.

## ENGAGEMENT WITH CUSTOMARY AND INFORMAL JUSTICE

In countries where CIJS exist alongside formal justice, there are often efforts to engage with these CIJS to ensure they address the needs of GBV survivors. Engagement with CIJS should always be preceded by research that examines the needs of GBV survivors and how best to address these needs without unintended consequences.

One example is the Women, Peace and Security Barometer, developed by Cordaid, which facilitates collective consultations with local women to understand justice and security needs.<sup>341</sup> Efforts have included training to address harmful gender and social norms that negatively impact survivors’ experience, and getting more women appointed in customary justice actor roles.

*“The informal and traditional justice systems work, as part of civil society; I am not against that. The only concern is about the involvement of women in informal and traditional justice systems. If there are jirgas or shuras [local councils] that involve men, and women and take part equally on taking any decision, this solves the problem at a community level. There are shuras in many provinces like Faryab, Kunduz, Kapisa and Parwan where men and women are working together, which is much more effective for dealing with the cases.”*

– Key informant from a CSO in Afghanistan

In the countries of focus, examples include the Philippines, where advocacy for reform within the customary system (by groups such as Women's Legal and Human Rights Bureau) has led to a move away from mediation, and to survivors and perpetrators being separated during justice processes. In PNG, village magistrates are being trained, and more women are now included in village courts.

In South Sudan, the Women Development Group (WDG) is working with local chiefs to draft customary laws that consider women's rights and inheritance. It has also pushed for the Government to allow more women to become chiefs, a position that has been dominated by men. There are now as many as 200 women chiefs in South Sudan where there used to be none. WDG and Steward Women both partner with judges from the formal system to train local chiefs on the relationship between the formal and informal traditional system to better understand what should go to the criminal court. Steward Women works with the traditional courts to build their capacity using human rights standards and ensure that they handle their cases using survivor-centred approaches.

Other good practice examples of CIJ engagement can also be found in Somalia where promising results of women's participation in CIJ systems, including as adjudicators, counsellors and advisors, can be seen<sup>342</sup>. IDLO has also documented promising approaches in its issue brief on *Women and Customary and Informal Justice Systems*<sup>343</sup>.

## TRAINING OF JUSTICE PROVIDERS

There are ongoing efforts across the focus countries to strengthen justice actors' capacity, address the needs of GBV survivors, and build trust with communities, with some success.

Among the efforts mentioned in our focus countries is a police and social worker training and coordination programme in South Sudan led by IsraAID, which has demonstrated some effectiveness. Several informants from the country reported encouraging experiences training police, including a head of police who was supportive of training, and a small unit of female police officers who were passionate and eager to learn. These successes, however, appear to be driven more by individual personalities than by structural adequacies within the national police force.

While trainings for justice actors have most often prioritized police and social workers, there have been efforts by governments, NGOs, multilateral and bilateral actors to build the capacity of judges, including an IDLO programme to strengthen the judiciary of South Sudan by facilitating training and increasing access to legal resources.<sup>344</sup>

In the Philippines, one example is from the Balay Alternative Legal Advocates for Development of Mindanaw, an organization working to build the capacities of local government units, especially the barangays, since most laws require execution by these units (e.g., the filing of barangay protection orders).

Under the Safe Spaces Act of 2019 in the Philippines, the Metropolitan Manila Development Authority (together with the Philippine National Police) is designated

as the Anti-Sexual Harassment Enforcer. In this capacity, the authority is supposed to train traffic enforcers on gender sensitivity. This training, however, has not yet been implemented.

## **SPECIALIZED MECHANISMS FOR DATA COLLECTION AND REVIEW**

A key aspect of ensuring that justice meets internationally accepted quality standards is to regularly monitor justice institutions and personnel. Monitoring and evaluation can address evidence gaps, identify best practices in justice delivery, and inform future law, policy and practice. Monitoring can be conducted internally or through monitoring and disciplinary mechanisms and regulatory bodies such as judicial commissions, bar associations and law societies.<sup>345</sup> Monitoring can also be conducted externally by civil society actors, national human rights institutions and parliamentary oversight.<sup>346</sup>

CSOs, including the media, think tanks and educational institutions, can play a strong watchdog role in monitoring survivors' experiences of accessing justice. One example is the Judicial System Monitoring Program, established in East Timor in 2001, which monitors the justice system and engages in advocacy about legality, transparency, accountability and strengthening the rule of law.<sup>347</sup> National human rights institutions (such as human rights commissions, women's commissions and ombudsmen) can undertake investigations into human rights violations, review legislative implementation, and make recommendations for improving laws and policies to better respond to survivors. The GBV Information Management System<sup>348</sup> was created to better

systematize the collection of GBV data in humanitarian settings. Meant as a tool for GBV service providers, the system promotes the safe, ethical and systematic collection of GBV data. It allows service providers to better understand their own data and share data across sites. The GBV Information Management System is strengthening the collection of data in complex contexts, including in South Sudan.

In our countries of focus, Honduras and Tunisia provided some examples. Specifically, Honduras has relatively strong data on violent crimes against women as compared to the rest of Central America. This is largely due to the work of the Institute for Democracy, Peace and Security (IUDPAS) of the National Autonomous University of Honduras.<sup>349</sup> IUDPAS has a National Observatory on Violence that builds and validates a dataset on violent deaths of women, femicides and fiscal requirements for legal medical evaluation of assaulted women, injuries and sexual crimes, with the ultimate aim of generating information through newsletters, research or other documents to influence public policy. IUDPAS is considered exemplary for its capacity to generate, analyse and manage data, and for its coordination with other organizations (from both civil society and the government).

Other organizations have been able to use the data published by IUDPAS to develop materials and influence public policy. Other CSOs also collect data on GBV. For example, the CSO Cattrachas,<sup>350</sup> which defends the rights of LGBTQI+ individuals in Honduras, maintains three types of registries: one monitors the murders of LGBTQI+ individuals, another tracks how social and mass media outlets communicate on issues referring to the

LGBTQI+ community, and a third monitors the Honduran Government's compliance regarding their responsibilities to protect the rights of this community.

The Honduran Women Human Rights Defenders, who are part of a Mesoamerican women human rights defenders network, monitor human rights violations and attacks on women.<sup>351</sup> A review of CSO capacity in the collection of data on GBV found that one of the main challenges facing CSOs is the lack of transparency and accessibility of official data.<sup>352</sup>

In Tunisia, a national observatory on violence against women was recently established by Governmental Decree 2020-126 of 25 February, 2020. The creation of this observatory is part of Tunisia's commitments under its law on the elimination of violence against women. The national observatory for combating violence against women is a public administrative institution with financial autonomy and is placed under the supervision of the ministry responsible for women.

## KEY LESSONS

- **Specialized police and prosecution units and specialized courts must be adequately resourced, closely monitored, and meaningfully embedded within the justice system to be sustainable and effective.** Specialized units that lack needed resources and stand apart from the regular justice apparatus will fail to become a useful tool of justice for survivors.
- **Greater effort should be made to draw the link between humanitarian and development needs, with access to justice for GBV survivors crucial to both sets of goals.** Humanitarian apparatuses are limited in their mandate, often to acute humanitarian concerns, hindering their ability to address longer-term development needs such as access to justice.
- **When survivors are seeking protection orders, they should be offered support throughout the process, including in the long term once the order has been served.** This more holistic approach to protection orders ensures greater effectiveness and trust.
- **Monitoring of the judiciary and government commitments on justice for survivors is needed to ensure accountability.** The judiciary and government must be held accountable to their commitments to GBV survivors through a clear monitoring framework with appropriate indicators.
- **Support should be available, such as through community paralegals, women's organizations and other community-based accompaniment to empower survivors of GBV to navigate complex justice pathways in the formal and informal justice systems. Empowering women is critical to engaging with CIJS.**<sup>353</sup> A range of good practices exist that show how GBV survivors can be supported to obtain protection or compensation from customary authorities or to refer their case to the formal justice system, when it has originated in the CIJS.





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## CHAPTER 6: SERVICES FOR GBV SURVIVORS IN COMPLEX SETTINGS

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Image Credit: © IDLO

# CHAPTER 6: SERVICES FOR GBV SURVIVORS IN COMPLEX SETTINGS

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## SUPPORT SERVICES ARE CRUCIAL FOR SURVIVORS ACCESSING JUSTICE

**Survivors of violence require a variety of essential services from health providers, justice and policing systems, and social services.** They may need psychosocial and legal counselling, medical treatment, immediate protection and a safe place for themselves and their children. Survivors of IPV may need timely and empathetic information about divorce and child custody, and survivors of sexual violence may need forensic documentation, prophylaxis for STIs, emergency contraception and police investigation.

Survivors have a range of needs, which underscores the importance of making as many coordinated, multilevel and multisectoral services available and accessible to them as possible. Global evidence shows that the first person a survivor turns to is often a friend or family member, not a formal service provider. Linkages between formal and informal support systems improve the chances that a survivor, or the first person or place she turns to, will know where to receive support in her journey to accessing justice.

### Box 15: Principles for Service Providers<sup>354</sup>

- safety
- privacy
- confidentiality
- respect
- non-discrimination
- informed consent

Most importantly, service providers should follow a survivor-centred approach that respects a survivor's right to identify, prioritize and meet her needs in the safest way possible. Giving power to survivors of violence by providing them with access to information, resources and services, and respecting their decisions is crucial to survivors accessing justice.

## MULTISECTORAL COORDINATION

**When survivors of violence do seek formal support, it can be difficult to navigate a system that works in silos, where service providers offer services without interacting or being connected with each other.** Such a system often leads to further trauma, including re-victimization of survivors who may have to relate their experience of violence multiple times to each service provider from whom they seek support. In such a system, survivors can get lost and drop out of the system.

Multisectoral coordination seeks to reduce the effects and consequences of harmful experiences and prevent further trauma, including re-victimization. For example, when referred to a service provider within a coordinated system, survivors will have paperwork documenting their case and a phone call will already have been made from the referring provider, so the receiving provider is apprised of the survivor's case. This reduces the number of times a survivor has to relate their experience of violence to providers.

Multisectoral coordination takes a systems approach to coordinate a network of well-trained service providers with the necessary skills to provide timely, quality and sensitive support to survivors of violence. This requires partnership and cooperation among service providers who follow a set of standards or principles in supporting survivors of violence. A network of effective quality services increases the trust of survivors in the capabilities of service providers to support them, including as they access justice.<sup>355</sup>

### Box 16: Standard operating procedures

To ensure quality service provision, each provider should have detailed standard operating procedures that outline the roles and responsibilities in service provision. Standard operating procedures are important as they set the guiding principles and ethical standards, and coordinate the multisectoral provision of services. They should be developed in consultation with key stakeholders and service providers who will implement them. All service providers engaged in a coordinated structure should follow the agreed guiding standards or principles and should ensure adequate resources and budget are available to provide appropriate and sustained services to survivors.

Multisectoral coordination can take place at the national and local levels. These coordination mechanisms are often described in laws, national strategies, cooperation protocols, quality standards or referral mechanisms. These mechanisms are implemented by law enforcement institutions, social services, healthcare facilities, educational institutions, women's groups and/or other organizations that provide specialized GBV services for survivors. The responsibility of multisectoral coordination often rests with a specific governing body or actor. In most countries, the government, supported by the United Nations or other international donors, plays this role while in other countries a specific organization or body is mandated with coordination responsibilities.





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For example, in PNG, informants shared that the two key institutions coordinating actions on GBV are the Family and Sexual Violence Action Committee (FSVAC) at national and provincial levels, and the GBV Secretariat, under the responsibility of the Department of Community Development and Religion, through the Office for the Development of Women. Both these structures are tasked with implementing the National GBV Strategy 2016–2025, alongside a few additional line ministries.

The FSVAC was established in 2000 and has a coordination, advocacy and support role that is guided by an integrated multisectoral strategy. It was created under the Consultative Implementation and Monitoring Council, a CSO with private sector funding established to offer policy advice to the Government of PNG. The GBV Secretariat's role is to ensure coordination among sectors working in the GBV field, as well as to provide technical support and improved

data collection on GBV services. However, informants shared that a review of four pilot provincial GBV secretariats found that they were not functioning as planned, largely due to a lack of clarity about their roles, understaffing, and insufficient resources and training. Informants shared that the UNDP is working with the Department of Community Development and Religion to clarify the roles of the GBV Secretariat and the FSVAC, particularly at the provincial level, as they have a similar mandate. This example shows that while the focus of coordinated responses is on increasing accessibility to quality and inclusive essential services across health, social services, police and justice sectors, it needs to be based on strong foundations including comprehensive legislation and legal frameworks, resources and financing, adequately trained services providers, mechanisms for monitoring and evaluation, and gender sensitive policies and practices.

## REFERRAL PATHWAYS

**An essential part of a coordinated system for service provision is the existence of a functioning referral pathway.** A referral pathway links different services and clearly delineates what service each provider offers and what roles official duty bearers must play. Clear referral procedures among services are established and connections are made among service providers. A referral pathway is often mapped out during the first stages of establishing a multisectoral coordination system. In most contexts, referral pathways link government services, humanitarian actors and local/grassroots organizations.

### Box 17: Referral pathways in humanitarian settings

In humanitarian settings, there are multiple structures to coordinate and support GBV interventions such as risk mitigation, response and prevention. The Inter Agency Standing Committee and the Global Protection Cluster are two such structures. The 2019 *Handbook for Coordinating Gender-based Violence Interventions in Emergencies*,<sup>356</sup> developed by the Global Protection Cluster, provides guidance and a range of tools to establish coordination among actors in humanitarian emergencies. Another common standard used in humanitarian settings is the Minimum Standards for Prevention and Response to GBV in Emergencies, developed by the UNFPA,<sup>357</sup> which has been integrated within existing mechanisms for national and multisectoral responses to GBV, as also to build capacity of state agencies and civil societies. Additionally, high-level initiatives such as the Call to Action on Protection from Gender-based Violence in Emergencies,<sup>358</sup> launched by the United Kingdom and Sweden in 2013, bring together international donors and organizations, and national NGOs to advocate for the prioritization of GBV in humanitarian operations. However, challenges to prioritizing GBV within the humanitarian system remain, such as the lack of funding for GBV activities and a dearth of monitoring indicators incorporated into humanitarian response plans.

GBV can be exacerbated in times of conflict or disaster, particularly when rates of GBV are already high. In the Philippines, when Typhoon Haiyan struck, women leaders shared that while there were some cases of GBV in the municipalities of Marabut and Basey in Samar, many survivors did not report the incidents or seek services because recovering from the typhoon, getting work, and providing food and shelter to their families were deemed of greater importance than their personal experiences of violence.

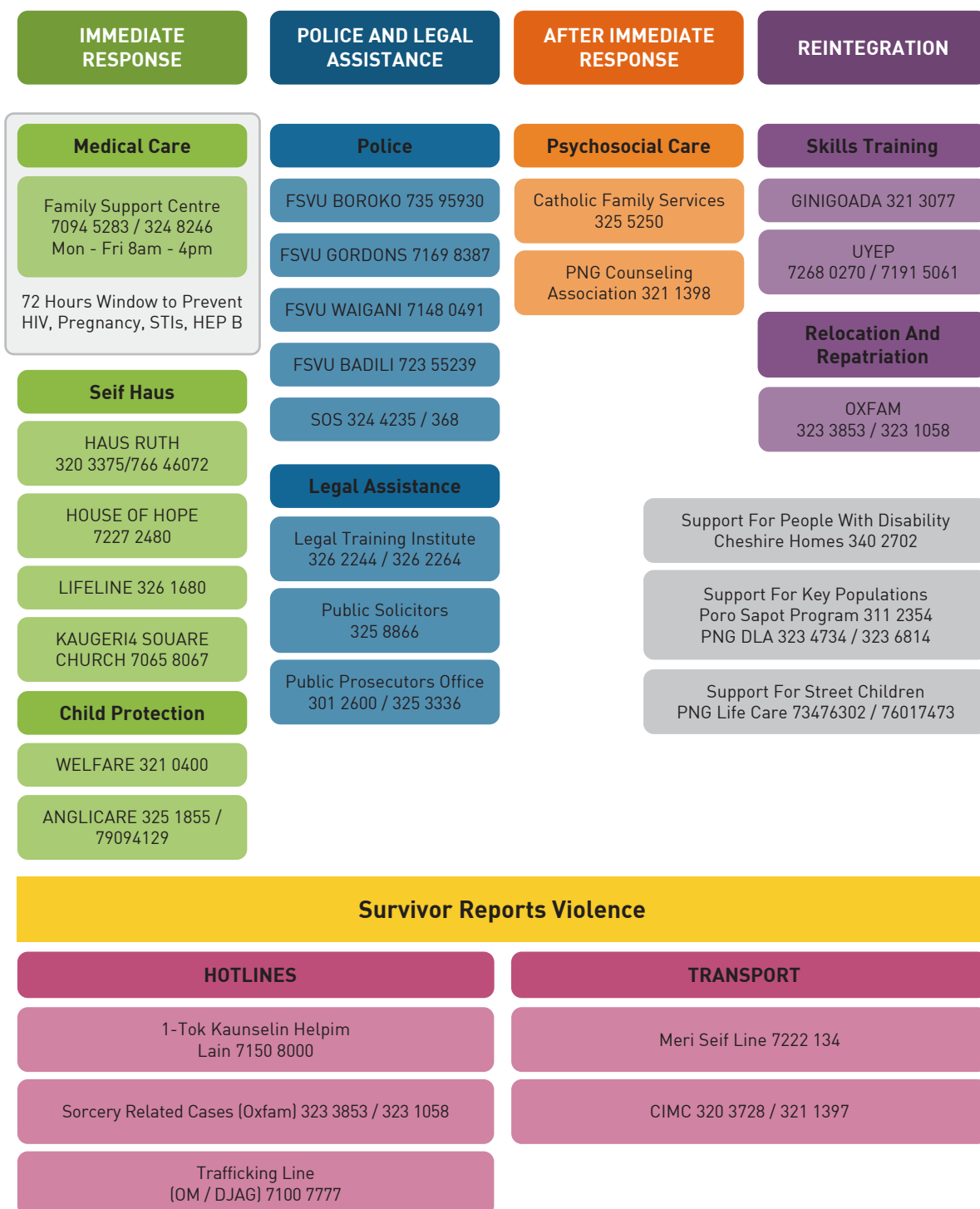
In PNG, the 7.3 magnitude earthquake in Hela province in February 2018 led to a joint response by UN Women, UNICEF and UNFPA to create awareness around GBV and provide integrated services to women and children, including case management, psychosocial support and dignity kits.<sup>359</sup> UNFPA also trained humanitarian aid workers on the Minimal Initial Service Package for Sexual and Reproductive Health,<sup>360</sup> GBV in Emergencies, psychological first aid and stress management. While funding dedicated to addressing GBV in emergencies continues to be limited, COVID-19 has shown the importance of building resilience across all levels of society and investing in emergency preparedness.

**Referral pathways help identify the various entry points through which a survivor can access care.** There should not be a designated first point of contact from which the referral system proceeds. Rather, all service providers should be aware of the referral pathway and be able to activate referrals whether or not they are the preferred first point of contact for a survivor. Referral pathways function effectively when details about specific service providers, including up-to-date contact details, are systematized and shared among all relevant stakeholders.

Box 12 provides a comprehensive illustration of the referral pathway for survivors of violence in the National Capital District, PNG, based on an entry point through the hotline 1-Tok Kaunselin Helpin Lain. This provides a clear pathway for survivors seeking support, including contact details. Despite this comprehensive referral pathway, most service providers operate only in urban city centres or provinces, which means that the majority of the rural population doesn't have easy access to referral pathways.



**Box 18:** National Capital District, PNG Referral Pathway



**NCD Gender Based Violence Action Committee (GBVAC) Secretariat  
324 0801/02**

With the onset of COVID-19, UN Women and Child Fund helped the PNG hotline 1-Tok Kaunselin Helpin Lain, which offers counselling services and referrals, provide 24-hour service.<sup>361</sup> Many programmes and organizations such as Justice Services and Stability for Development Program (JSS4D) and FSVAC turned to messaging via text messages, radio programmes, television and advertisements in papers to inform the public that services such as the hotline and FSVUs were still available during the COVID-19 restrictions. The messaging by text was very effective, but it created demand for services, which became overwhelming for service providers. The hotline was unable to attend to many of the calls. Ensuring services are available to meet increased demand through awareness-raising is an important lesson learned from the COVID-19 response.

In Tunisia, the lockdown during the heights of the COVID-19 pandemic also saw an increase in demand for its violence hotline. The '1899 Green Line' is a 24-hour, toll-free helpline to report instances of IPV. It is managed by the Ministry of Women, Children and the Elderly. Women in Tunisia were calling at a rate of five times – sometimes up to nine times – higher than comparable periods the prior year. According to an informant who manages the hotline:

*“During the confinement, there was no way to contact other people, there was limited travel, the aggressor and the victim were in the same space and there was no possibility to leave this space.”*

This increased demand during times of emergency underscores the importance of the availability of such services.

**In South Sudan, informants shared how the referral pathway for GBV survivor services is clearly defined and well supported by multilateral actors and NGOs.** United Nations agencies provide support to grassroots organizations through funding, administering safe spaces for women and girls, and case management and service delivery. The GBV Sub-Cluster serves as a convener and coordinating body, supporting organizations in sharing what resources they offer and providing that information to grassroots. Their work ensures that the referral pathway is understood by key stakeholders, including local chiefs. The GBV Sub-Cluster works with service providers to ensure scale up of multisectoral services for GBV survivors (health, safety, security, psychosocial and legal), and on GBV prevention and risk mitigation. The International Rescue Committee (IRC) has been a crucial actor in health service delivery across the country and in Protection of Civilians sites, including for GBV survivors through GBV clinics.<sup>362</sup> IRC also offers safe spaces for women and girls. Women's groups provide key access points to the referral pathway, and NGOs in South Sudan are essential to GBV service provision, including WDG, Steward Women, South Sudan Association of Lawyers, South Sudan Law Society, and Men Nonviolent Peace Force.

While the existence of functioning referral pathways in complex contexts is promising, they do not always function as intended. In many countries, services are fragmented, and survivors often don't know where to go or don't have guidance on other services available to them. Access is also a big challenge as many services are concentrated in urban areas.



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Even for survivors living therein, costs can be a challenge when services are private.

Strengthening or establishing referral pathways involves efforts to develop national or local protocols, establishing minimum standards of care and standard operating procedures for actors along the referral pathway.<sup>363</sup> It is also critical for referral pathways to be reviewed and kept updated by conducting regular mapping and engaging with referral partners to ensure survivor-centred responses that reflect emerging developments and needs.

## ESSENTIAL SERVICES

**In order to access justice, survivors need a range of essential services to address the complex short-, medium- and long-term challenges they face.**

In a coordinated system, a wide range of sectors and actors are involved in providing these services. To access justice, survivors typically need legal aid support, case management and legal accompaniment, and psychosocial counselling. They may access these

services from specialized service providers, including one-stop centres and/or from general service providers such as the prosecutor's office, private legal offices or hospitals. Additionally, survivors may need medical attention and a shelter or safe place to stay. These are the key services that exist in the complex contexts explored in this paper.

The Joint Global Program on **Essential Services for Women and Girls Subject to Violence** developed the **Essential Services Package for Women and Girls Subject to Violence: Core Elements and Quality Guidelines**, 2015.<sup>364</sup> By 2019, 58 countries adopted the Essential Services Package as the standard for provision of quality services to survivors of violence. Box 19 provides a comprehensive overview of essential services for women and girls who experience violence.

While the essential services and actions are a useful standard, it is important to note that in most contexts (particularly in complex contexts) these services are not always available, functioning or well-coordinated.

**Box 19:** Essential Services and Actions for Women and Girls Subject to Violence

| Essential services and actions | Health                                                                                                                                                                                                                                                                                                                                        | Justice and Policing                                                                                                                                                                                                                                                                                                                                                                                                                           | Social services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                | <ol style="list-style-type: none"> <li>1. Identification of survivors of intimate partner violence</li> <li>2. First line support</li> <li>3. Care of injuries and urgent medical treatment</li> <li>4. Sexual assault examination and care</li> <li>5. Mental health assessment and care</li> <li>6. Documentation (medico-legal)</li> </ol> | <ol style="list-style-type: none"> <li>1. Prevention</li> <li>2. Initial contact</li> <li>3. Assessment/ investigation</li> <li>4. Pre-trial processes</li> <li>5. Trial processes</li> <li>6. Perpetrator accountability and reparations</li> <li>7. Post-trial processes</li> <li>8. Safety and protection</li> <li>9. Assistance and support</li> <li>10. Communication and information</li> <li>11. Justice sector coordination</li> </ol> | <ol style="list-style-type: none"> <li>1. Crisis information</li> <li>2. Crisis counselling</li> <li>3. Help lines</li> <li>4. Safe accommodations</li> <li>5. Material and financial aid</li> <li>6. Creation, recovery, replacement of identity documents</li> <li>7. Legal and rights information, advice and representation, including in plural legal systems</li> <li>8. Psycho-social support and counselling</li> <li>9. Women-centred support.</li> <li>10. Children's services for any child affected by violence</li> <li>11. Community information, education and community outreach</li> <li>12. Assistance towards economic independence, recovery and autonomy</li> </ol> |

| Coordination and governance of coordination                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| National level: Essential actions                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Local level: Essential actions                                                                                                                                                                                     |
| <ol style="list-style-type: none"> <li>1. Law and policy making</li> <li>2. Appropriation and allocation of resources</li> <li>3. Standard setting for establishment of local level coordinated responses</li> <li>4. Inclusive approaches to coordinated responses</li> <li>5. Facilitate capacity development of policy makers and other decision-makers on coordinated responses to VAWG</li> <li>6. Monitoring and evaluation of coordination at national and local levels</li> </ol> | <ol style="list-style-type: none"> <li>1. Creation of formal structures for local coordination and governance of coordination</li> <li>2. Implementation of coordination and governance of coordination</li> </ol> |

| Foundational elements | Comprehensive legislation and legal framework | Governance oversight and accountability | Resource and financing    |
|-----------------------|-----------------------------------------------|-----------------------------------------|---------------------------|
|                       | Training and workforce development            | Gender sensitive policies and practices | Monitoring and evaluation |

## ROLE OF CIVIL SOCIETY AND WOMEN'S GROUPS IN PROVIDING SERVICES

**Women's organizations, CSOs and faith-based organizations play a critical role in filling the gap in government services by providing crucial services to survivors.** Women human rights defenders and women CSOs often provide accompaniment and services for women and girls who have survived GBV, and the families of those women and girls who are subjected to fatal GBV, in the process of seeking justice and reparation. Women's rights organizations have made enormous strides in demanding laws criminalizing domestic violence,

in implementing a variety of measures to stop violence, and in providing services for survivors (legal assistance, counselling, shelters, self-help centres and psychosocial services).

In PNG, an informant shared that when the JSS4D programme began 10 years ago, only 135,000 kina (38,000 USD) was allocated to the gender and GBV budget. It has now increased to 8 million kina (2.2 million USD) and represents the largest budget line in the JSS4D programme. There has been a shift from focusing on the police to working with CSOs, in recognition of their important role in providing preventative and support services to survivors. This shift has also been possible due to the Australian

Federal Police's increased investment in working with the police in PNG. Given the importance of civil society and women's groups in supporting survivors' access to justice, the CEDAW Committee has emphasized to States that feminist civil society should have a key role in reflecting on, reviewing and making changes to justice systems so that they fully respect the rights of women and girls seeking justice.<sup>365</sup>

## CASE MANAGEMENT AND LEGAL ACCOMPANIMENT

### **Case management services are crucial for accessing justice for survivors.**

Women accessing justice often have to navigate a complex system – from police stations to hospitals to counselling services. Navigating these systems can be intimidating and frustrating, but case managers can accompany women throughout this process. In some countries, paralegals accompany women in navigating the legal system, while in other contexts, women's organizations and community-based organizations provide case management support. Accompanying survivors on their journey to accessing justice is an important service to ensure that women feel supported.

While most countries lack strong case management services, PNG has a few strong formal and informal case management support systems for survivors. Femili PNG has emerged as a best practice example for formal case management in PNG (see Box 14). In areas with limited capacity, human rights defenders and grassroots organizations such as KUSWA provide informal case management support by helping survivors navigate various services

and follow up on the status of cases at the police station and courts. When discussing the role of KUSWA, a police officer in Goroka explained "*She [the advocate] is always at the police station to see what is happening with the women*".<sup>366</sup>

### **Box 20:** Femili PNG - An example of effective case management

Established in 2013, Femili PNG is a local NGO dedicated to case management. It was created in Lae, Morobe Province, by a former provincial Family Support Centre who recognized the difficulties of navigating the criminal justice system for survivors seeking formal justice. Therefore, the case management centre was designed to see if a service specifically focused on coordinating cases, and essentially walking a survivor through the referral pathway, would improve uptake of different services.

*"When Femili PNG started it was hard to give services because survivors don't know where to go. We would give psychological and medical care but what about justice? People wouldn't know where to go after we would help. Femili PNG was created so that cases don't get lost in the process."*

*– Femili PNG staff member.*<sup>367</sup>

Femili PNG's innovative approach puts survivors rather than services at the centre. Their success can be attributed to strong partnerships and their ability to coordinate with various service providers.



This enables them to successfully address high-risk cases that would normally be dropped in the complex bureaucracy. They are the “*glue between the police force, courts, health systems and women’s shelters*”.<sup>368</sup>

A 2019 study on the use and efficacy of FPOs in Lae found that the support of Femili PNG resulted in an increased likelihood of a survivor receiving an IPO.<sup>369</sup> Provinces that don’t have a case management centre have a lower uptake in IPOs in comparison to places that do (such as Morobe and National Capital District, where Femili PNG functions). Furthermore, IPOs are most successfully converted into long-term protection orders when survivors receive coordinated case management. In NCD, Femili PNG provides case management and shelter services under the Bel Isi project, a public-private partnership with numerous businesses, and in coordination with FSVAC, UN Women, and the Australian Government’s Pacific Women programme.

## PSYCHOSOCIAL COUNSELLING

**Psychosocial counselling seeks to help survivors regain self-esteem and control of their life by empowering them to make informed decisions about the best way to address the trauma and consequences of violence.**<sup>370</sup> This is

achieved through empathetic listening, informing survivors about their rights and various forms of support, and encouraging self-awareness to take steps to stop violence or reduce the potential for re-victimization. Psychosocial counsellors assist with risk assessment and making safety plans. They can also act as case managers to ensure survivors are accessing all the support they may need. Following a survivor-centred approach is crucial when providing psychosocial counselling so that survivors can regain power and decision-making in their lives. Unfortunately, the legal framework in some contexts does not always follow a survivor-centred approach.

A peculiarity of the Honduran domestic violence law, for example, is that judges can mandate counselling not only for the aggressor, but also for the survivor. The stated rationale is to “*seek the recovery of the victim’s self-esteem and the re-education of the aggressor*”. Although judges are not required to refer women to the family counselling centres, data from the Public Prosecutor’s Office of Tegucigalpa for 2019 indicates that in 76 per cent of the cases where a sentence was passed, the judge mandated counselling for both the victim and the aggressor.<sup>371</sup>

In PNG, counselling support has become an important service provided by most service providers. Informants

shared how many services, including counselling, were closed during the initial onset of the COVID-19 pandemic. However, UN Women convened the protection cluster and was able to get GBV services classified as an essential service by the national controllers during the state of emergency and lockdown in PNG. This enabled survivors to access psychosocial counselling even during lockdown restrictions. While psychosocial counselling is offered as a specialized service for GBV survivors in PNG, psychosocial support for GBV survivors is sorely lacking in the Philippines. An informant with knowledge of the legal system shared how the Mental Health Law does not generally cover survivors of GBV. While public hospitals (such as the Philippine General Hospital) can provide for such services, they have limited human resources that can support survivors. If survivors choose to go to private hospitals, they would need to pay at least PHP 2,000 just for a single counselling session. This poses a significant financial barrier for survivors of GBV.

## ONE-STOP CENTRES

**To meet the challenge of fragmentation and inadequacy of services, one-stop crisis centres have been adopted in many low- and middle-income countries to provide a range of services to GBV survivors such as medical, legal, psychosocial counselling, referral and advocacy services.** However, despite growing popularity, recent research has shown that significant barriers prevent the one-stop centre model from being implemented as designed and achieving the intended results of providing high quality, accessible, acceptable multisectoral care. These include (1)

barriers to implementation such as the lack of multisectoral staff, staff time constraints, lack of medical supplies; and (2) barriers to multisectoral coordination due to fragmented services and unclear responsibilities of implementing partners. Achievement of intended results requires strategic investments, standardized policies and procedures, and regular inter-agency meetings that facilitate multisectoral coordination.<sup>372</sup>

In Honduras, the Women's City Program was created in 2017. It is a one-stop centre that works to improve women's living conditions in Honduras. The first centre was established in Tegucigalpa, and there are now six centres<sup>373</sup> across the country, as well as an additional mobile centre. The Women's City Program has the following thematic programmes: economic autonomy, prevention and care of adolescent pregnancy, sexual and reproductive health, collective education, and assisting VAWG survivors. It brings together 14 public institutions that offer services within the centre. Having all these services available in one site facilitates the referral pathway in supporting survivors. As the director of Ciudad Mujer, a study informant, noted:

*"The references that we make between modules are important, because, for example, many of the victims of violence depend economically on the aggressor, so they are invited to go to the module of economic autonomy so that they can also take the route of an enterprise or help them find a job."*

The services are free of charge, and available for women without official identification (they can also obtain an ID at the centre). The Module of Attention and Protection of Women's Rights offers various services for VAWG survivors such as psychosocial counselling, support for developing life and safety plans, crisis intervention, support and self-help groups, legal advice and representation, medical evaluation and follow-up. During the COVID-19 pandemic, the Women's City Program developed a digital platform that offered select services, as well as a WhatsApp channel where survivors could obtain psychological counselling. Campaigns for survivors to report GBV were also implemented, in coordination with the National Institute of Women and the 911 line.

In Honduras, survivors of violence can also be eligible for a witness protection programme in case their participation in a criminal case endangers them or someone close to them. However, the survivor must prove that their case is related to organized crime to receive this service, which in many cases is not something that survivors are comfortable mentioning. Some prosecutors also fail to inform victims about the witness protection programme during the criminal process.<sup>374</sup>

## SHELTERS

**Access to shelter is key to protecting women against various forms of GBV, particularly domestic violence.** Shelters, which are emergency, temporary, safe accommodation for women and children who have faced or are at risk of violence, vary significantly across contexts. They may be run by NGOs, run independently, or supported by the State. There are several concerns relating to the provision

of shelter services, including: limited availability, inadequate funding, lack of security and confidentiality, barriers to access and referrals (e.g. need for formal recognition of survivor status), safe transit out of shelters, limited duration of stay permitted and lack of services to empower women to deal with violence faced.<sup>375</sup>

*"The mushrooming of support services like shelters is very exciting."*

– Key informant working as a researcher in PNG

**Shelters and safe houses are becoming increasingly available to survivors seeking refuge.** Informants shared that, during the COVID-19 pandemic, the Tunisian Ministry of Women opened a new GBV shelter with the assistance of UNFPA. The High Judicial Council urged family judges to take all necessary measures to protect victims, guarantee their access to justice, and address violence against women and children (two extremely vulnerable populations during global pandemics). In 2020, the Tunisia's Ministry of Women, Children and Family endorsed its first national procedure manual for women's shelter, outlining uniform guidelines as they deliver services, including legal services to women and children survivors of violence<sup>376</sup>. The majority of safe houses in PNG are managed by religious organizations such as Haus Ruth in Port Moresby (run by City Mission PNG), Nazareth Center for Rehabilitation in Bougainville (Church of Melanesia), and Meri Seif Haus in Goroka (Four Square Church). Although most shelters are chronically under-resourced, they provide survivors with a short-term, often

free, opportunity to escape dangerous situations and access other services. Shelters can be a life-saving measure for women facing extreme physical and/or sexual violence, or SARV. Most shelters are in major cities, with the exception of the Nazareth Center, which operates several small, community-based havens and one large refuge in Bougainville. Women are often referred to the shelters by the police or case management organizations such as Femili PNG, and some women find their way to a shelter on their own. In Bougainville, the FSC makes referrals to the Nazareth Center, likewise, the Oxfam-supported KUSWA and Human Rights Defenders make referrals to the Meri Seif Haus.

**In Honduras, the shelter network is private, in that it functions through NGOs that do not receive state funding.**

Expanding the network of shelters available to victims of domestic violence was one of the requests made to the States by the Inter-American Commission on Human Rights.<sup>377</sup> Survivors face insufficient shelter coverage outside the capital city, Tegucigalpa. Challenges faced by Honduran survivors were expressed by a member of the Honduran judiciary:

*“There is no transitional housing to enable women to file complaints in the main cities of the country. A woman who travels from the interior of the country to file a complaint in the cities finds that she does not have a place to stay while the process is taking place. Those who can, stay in the homes of relatives.”*

These shelters can also have restrictive provisions, including prohibiting cell phones, as well as unrealistic requirements as to how long one can stay and who may accompany them, with which survivors are unable to comply:

*“There are safe houses where survivors of VAWG can stay for up to three months and they can enter with children only up to certain ages. This is not always an option for the user, since it implies abandoning their life and work context.”*

-Key informant from the judiciary

There are heightened needs and challenges associated with safe shelters in conflict situations. In such situations, safe shelters are run by the United Nations, NGOs or community-based organizations, or by governments. However, there are limited examples of organizations or networks providing shelters in camps and urban settings. The 2005 Inter-Agency Standing Committee Guidance on Gender-based Violence provides detailed guidance on the provision of safe shelters for refugees fleeing GBV, including providing community-based protection options in camp settings whenever possible.<sup>378</sup> Case studies conducted by the United Nations High Commissioner for Refugees (UNHCR) and University of California, Berkeley, showed that despite scarcity, there is great diversity in shelter models (e.g. traditional safe houses, homes of community volunteers, secret spaces in offices or community centres, clusters of huts in enclosed sections of refugee camps), populations served, and ways of operating.<sup>379</sup> Engagement of shelters with surrounding communities is of

critical importance. The report highlights, inter alia, the importance of promoting community buy-in, providing support and security for staff and residents, exit and placement planning for residents from the outset, undertaking shelter mapping, and coordination and exchange between government and civil society programmes.<sup>380</sup>

Though shelters are not widely available across South Sudan, there is a shelter in Wau and select others across states. In the absence of formal shelters, women, parents and community members house survivors. A key informant noted that safe spaces are being created organically by women, recalling how when South Sudanese women gather to sew bedsheets or complete other duties in women-only spaces, they share stories and sing songs together, thus creating their own, organic way of processing trauma. Women in women-only spaces play an essential role in GBV awareness-raising, access to services, and creating networks for psychosocial support. The importance of supporting these spaces to amplify women's voices was underscored by a key informant working in a CSO in South Sudan:

*"A lot of our stories are being told by international organizations, not by South Sudanese women themselves. There is value in creating spaces where women can share their stories themselves, can write about their experiences and the work that they do themselves without someone speaking on their behalf or for them."*

## HEALTH SECTOR RESPONSE

### **Survivors of violence may need health services, particularly in the immediate aftermath of experiencing violence.**

Comprehensive medical services will often offer first-line support, medical history and examination, clinical care of injuries, mental health assessment and management or referral, evidence collection and risk assessment and management.

In Honduras, the Ministry of Health was the first Honduran institution to address GBV through national policies and services. In the 1990s, the ministry, with support from the Pan American Health Organization, created family counselling centres in several of the country's primary care centres to provide legal and psychological support to women who suffer from IPV, sexual violence and domestic violence.<sup>381</sup>

Furthermore, universal screening is mandated for women in all health consultations, including during prenatal care. Nevertheless, these standards are not fully implemented, and few women actually receive domestic violence services within the health system. Although several family counselling centres do exist, they primarily receive survivors and perpetrators who are mandated by the courts to receive counselling, rather than from within the health services.<sup>382</sup>

The Honduran Ministry of Health recently piloted an innovative programme, called Safe and Sound (Sanas y Salvos), to improve the health sector's response to IPV among pregnant women. The programme, based on similar programmes carried out in South Africa, Australia and the US, created a new procedure for screening and counselling for women who experienced IPV during

pregnancy. The effectiveness of the programme was evaluated in two urban health centres. After three months, women who received an average of two to three counselling sessions scored significantly higher on knowledge, use of safety measures and self-efficacy than women in the control group.<sup>383</sup> The study concluded that it was feasible for Sanas y Salvas to be safely implemented on a broader scale within the public health system.

In PNG, FSCs provide important medical services to survivors of GBV. Created in 2003 at the time FSVAC was established, FSCs were originally designed as one-stop centres in public hospitals, offering police, legal and counselling services to survivors of violence. In reality, most FSCs only offer medical and counselling services. There are currently 15 FSCs in 13 of the 22 provinces in PNG, established under the National Department of Health or the Provincial Health Authorities.<sup>384</sup> Some FSC staff receive salaries from the Department of Health or through NGOs working directly with specific FSCs, but there is a heavy reliance on volunteerism, with CSOs and women's organizations staffing many of them.<sup>385</sup> Both the Port Moresby and Lae FSCs are considered models for high quality, survivor-centred care with specialized services for survivors of sexual assault and child sexual abuse, and private counselling rooms. However, FSCs outside of these two urban centres are more modest. A 2016 evaluation found underutilization and variation in the quality of services among the FSCs.<sup>386</sup> Most referrals to FSCs come from the

emergency department and outside the health system, such as from police and safe houses. Overall, coordination with hospitals and primary prevention was inconsistent.

## KEY LESSONS

- **Strong community networks are of paramount importance in ensuring access to justice for GBV survivors.** Community networks, consisting of CSOs, human rights defenders, faith-based organizations and women's organizations, are important stakeholders in supporting survivors in seeking justice. They exist in all six of the case study countries and have organizing capacity in the most hard-to-reach areas. Not only do they provide support services, but they are also engaged at the community level in creating awareness about GBV.
- **Multisectoral coordination and strong referral pathways, particularly between police and other service providers, enhance access to justice.** Police officers need basic resources to respond to GBV, and strong networks between the police and local communities, including human rights defenders and customary and informal justice actors, create a handshake between grassroots networks and the legal justice system in bringing GBV cases to legal justice, should the survivor wish to pursue formal justice. This referral pathway should be as up to date as possible.



- **Case management in complex contexts should be strengthened and scaled up through mentoring, learning exchanges and rotational learning experiences.** Donors and Government should invest heavily in case management as it has been shown to increase survivor's access to formal justice.
- **Service providers require continual training and capacity building activities on their roles and responsibilities, especially duty bearers.** In addition to the laws and service provision, trainings must seek to change attitudes and harmful gender and social norms around GBV that service providers may have.



# **CHAPTER 7: PRIMARY PREVENTION OF GBV IN COMPLEX SETTINGS**

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# CHAPTER 7: PRIMARY PREVENTION OF GBV IN COMPLEX SETTINGS

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**The prevention of GBV is of primary importance in the fight to reduce violence and strengthen justice for survivors.**<sup>387</sup> GBV prevention aims to understand the root causes and risk factors of GBV and reduce or eliminate them. Primary prevention activities typically address gender inequality, harmful social and gender norms, power imbalances and the culture of acceptance of GBV. Prevention activities require long-term planning and investment to achieve substantive change in attitudes and behaviours that perpetuate GBV.

## RESPECT FRAMEWORK FOR GBV PREVENTION

**WHO and other United Nations agencies have adopted the RESPECT Women: Preventing Violence against Women framework, which presents seven key strategies for preventing violence against women.** These are: improving relationship skills (R), economic and social empowerment of women (E), assured access to services (S), reduced poverty (P), creating safer environments (E), prevention of child and adolescent abuse (C), and transforming harmful gender attitudes, beliefs, norms and stereotypes (T). The RESPECT framework recommends these strategies not be applied in a siloed manner, but rather in context-responsive, synchronized ways.<sup>388</sup>

There are several examples of successful prevention interventions that fit within this framework. The **Stepping Stones**<sup>389</sup> programme in South Africa works with young men and women to promote gender egalitarian attitudes that reduce the likelihood of men perpetrating violence. The **IMAGE project**,<sup>390</sup> also in South Africa, empowers women through microfinance, gender trainings and community mobilization, and has significantly reduced domestic violence rates. Finally, **SASA!**,<sup>391</sup> a community mobilization intervention in Uganda, is a programme to change social norms around violence. Due to the effectiveness of the SASA! approach, it has been replicated in 20 countries (including South Sudan), and in especially challenging contexts such as refugee camps, rural settings and high-density urban communities.

A promising prevention approach is UN Women's global flagship initiative **Safe Cities and Safe Public Spaces**,<sup>392</sup> delivered in partnership with global and local partners in 27 'champion' cities around the world. The programme works to prevent sexual violence in public spaces by implementing interventions to develop capacity and raise awareness of local authorities, women's groups and community partners, advocate for legislative change, and monitor legal implementation. In the Philippines, as part of this initiative, data collection

on sexual harassment and advocacy in Quezon City led to the enactment of a local law on sexual harassment in public spaces. Other initiatives in Quezon City included developing apps to address sexual harassment.

## IMPORTANCE OF PRIMARY PREVENTION

**In order to comprehensively address GBV, prevention efforts need to go beyond secondary and tertiary prevention and address primary prevention.** Primary prevention activities seek to prevent GBV before it occurs, while secondary prevention is the immediate response after violence occurs to manage the short-term consequences of violence. Tertiary prevention addresses the long-term responses to address the lasting consequences of violence. A core piece of secondary and tertiary prevention is service provision, which is why service provision must be coordinated with prevention activities.

**Efforts to address GBV have primarily focused on strengthening access to justice and services, with less focus on prevention.** However, programmes to prevent GBV have increased greatly in some of the focus countries, but much more investment is needed to comprehensively address GBV, particularly in complex contexts. For example, the number of GBV prevention programmes in PNG has significantly increased in the past decade, along with more widespread acceptance that GBV is preventable. Diverse actors are involved in the prevention of GBV, with significant investments in community-based approaches, working with faith-based organizations, men, youth and the education sector. However, prevention

is still the least developed and least-funded sector, and very few evaluations exist on the effectiveness of primary prevention programmes that focus on social norms change. The dearth of evaluations of primary prevention efforts could be explained by the fact that the majority of prevention efforts are focused on awareness-raising. While important, prevention efforts must go beyond awareness to address social norms change. The Pacific Women Shaping Pacific Development programme has worked to develop evidence-based GBV prevention programmes in PNG.<sup>393</sup> Many of these programmes are implemented by international NGOs, in partnership with local CSOs.

**Several innovative social norms transformation programmes that seek to address GBV risks at different levels of society exist in PNG and have the potential to be taken to scale.** For example, programmes such as the **Community Trauma Healing Programme** and the **Gender Justice Programme** (both led by Oxfam)<sup>394</sup> and **Komuniti Lukatim Ol Meri** (led by FHI360),<sup>395</sup> show promise in behaviour and social norms change at the community level. School-based interventions, such as **Equal Playing Field's** sports-based respectful relationships programme, and UNFPA-supported Comprehensive Sexuality Education for in-school youth as well as Life Skills Education, seek to prevent childhood experiences of GBV. Informants shared how at a larger scale, a UN Women-supported youth-led programme called **Sanap Wantaim** improves safety for women and girls in public transport through the Meri Seif Buses, and in markets through the Safe Cities programme. An adaptation of the SASA! programme, in addition to the UNICEF-led faith-based **Parenting for**

**Child Development** programme,<sup>396</sup> work at the interpersonal level to improve communication between couples and reduce violence within families.

**COVID-19 has disrupted much of the prevention work around GBV,** particularly since this work requires repetition, time and direct contact with communities. COVID-19 greatly challenged organizations to find innovative ways to continue their prevention work. The organizations that were able to pivot already had strong prevention programmes and roots in the communities and were able to adapt to the changing circumstances. For example, informants shared how the Nazareth Centre for Rehabilitation, a faith-based organization with strong feminist principles, continued to do their prevention work in the community using human rights defenders and male advocates in Bougainville. FHI360 was able to continue their prevention work in the Western Highlands, East Sepik and Sanduan provinces by incorporating safety measures such as reducing large crowd activities, practising social distancing, using more print materials, and disseminating information through the radio. Oxfam were the first to get posters out to the community around the importance of keeping families safe during COVID-19. UN Women developed guidelines around community dissemination, including safety measures and the types of messaging around COVID-19 that need to be incorporated into existing messaging around violence prevention. The GBV Protection Cluster developed COVID-19 messaging around women's safety. Equal Playing Field went from engaging 200 school children a day to engaging only 50 a day to comply with the physical distancing requirements. In addition to increased travel costs,

the increased gap between sessions meant that many teams had to start from the beginning. Equal Playing Field was able to pivot by focusing on working with schools to develop child protection policies using the safe school framework, which includes eight standards schools should meet to be recognized as a child-safe school.

## AWARENESS-RAISING

**Activities to promote awareness of GBV and inform communities about available resources and support are crucial to preventing GBV but are not considered primary prevention<sup>397</sup>.** Awareness-raising through community mobilization and mass media campaigns is important, particularly if GBV is not widely recognized in a community or people are not open to talking about it. This is particularly crucial in complex contexts where GBV rates are extremely high and GBV is accepted as the norm.

GBV awareness-raising activities can also influence survivors, or friends and family of survivors, to recognize the different forms of GBV, its consequences, and empower survivors to seek support and access justice. Often, awareness-raising activities can lead to an increase in demand for services, which is why awareness-raising should only occur if services are able to handle the increase in demand. Comprehensive prevention strategies must work in coordination with services to improve access to justice for survivors of violence.

**In South Sudan, informants shared how awareness of GBV as a significant problem has grown over the last decade.** This has caused some anecdotal increase in women and girls feeling more comfortable talking about



GBV they have experienced. Younger women in particular are beginning to speak up and curate conversations around GBV. However, the work of GBV awareness-raising is ongoing and incomplete (including raising awareness among women about their own rights). Awareness of laws, for example, is uneven regionally, with those in more rural areas having less knowledge than those in urban centres like Juba.

**Box 21:** GBV prevention initiatives in fragile and conflict settings

GBV prevention initiatives have not been prioritized in fragile and conflict settings, as they require long-term approaches. Instead, the focus has been on risk mitigation and response efforts. There has, however, been increased attention on developing prevention models appropriate for humanitarian settings. Some popular prevention programmes, such as **SASA!, Stepping Stones, Unite for a Better Life and Engaging Men through Accountable Practice**, have been implemented in contexts of protracted conflicts. However, the impact of these programmes in humanitarian settings is not clear. Even so, there is a gradual shift from focusing on awareness generation programmes to community-based prevention and economic empowerment programmes for women and girls. Consequently, there is growing evidence of what works to prevent GBV in humanitarian settings. Evaluations of prevention programmes have shown effectiveness in changing social norms, particularly those engaging men and those that are specifically targeted at adolescent girls.

**Key stakeholders are working to prevent GBV in South Sudan, including through social norm change programmes, though this work is under-supported by donors and government actors.**

IRC has been implementing the SASA! programme in South Sudan and other humanitarian contexts.<sup>398</sup> Women for Women International have been working in South Sudan for over a decade with the most marginalized women, offering vocational, health and rights training to improve their lives.<sup>399</sup> Communities Care, a GBV prevention and response programme that has demonstrated promise in other humanitarian settings, is being funded by UNICEF and implemented in South Sudan by Voice for Change and Organization for Children's Harmony.<sup>400</sup> Evaluation results demonstrate positive changes in beliefs related to GBV.<sup>401</sup>

Local women's organizations like WDG are raising awareness about GBV through media campaigns and running community programming that educates men on their role in GBV prevention, and economically empowers women. WDG also created a GBV prevention network among women during the height of the conflict. The GBV network in South Sudan is working on behaviour and social norm change. Crown the Women South Sudan works in schools to raise awareness about GBV with children, adolescents, educators and parents.

Informants described efforts to increasingly involve traditional Boma chiefs, given their important role in customary justice in South Sudanese communities. Hope Restoration South Sudan is focusing on economically empowering women to run small businesses. They work with survivors to sell vegetables, open small restaurants, and engage in other income-generating



activity. UNHCR had donated sewing machines to Hope Restoration South Sudan, which the women they work with used to make and sell facemasks during the pandemic.

## IMPORTANCE OF COMMUNITY MOBILIZATION

**Successful GBV prevention activities must take a whole of community approach where men, women, boys and girls are engaged in planned GBV prevention activities.** For example, in Afghanistan, the LEVAW mandated the Ministry of Justice, Ministry of Haq and Religious Affairs and Ministry of Women's Affairs with the responsibility of providing awareness on violence, causes of violence, impact of violence on public health and families and rights of victims and fundamental rights of citizens including harmful social and gender norms and laws. However, most of these awareness programmes were not designed to be gender-responsive and were not provided by gender experts. Additionally, women who were becoming aware of their rights and trying to negotiate their rights with men faced resistance, and some faced increased risk of violence from men:

*"Many workshops and campaigns are held for women to know their right[s] in last years. But the problem was that only women were trained, and men were not. When men are not aware of women's rights, they will commit violence against women. We need to provide this awareness to both men and women. Due to the continued war in Afghanistan many internal and external groups direct men to extremism which increases violence against women."*

- Key informant from the former Afghan Government

In PNG, strong community networks have helped prevent some of the most extreme forms of GBV. When groups of people form networks, it is more likely that a sorcery accusation will not turn violent. For example, when police work with a village court magistrate, pastor, or community leader, there is hope that they can at least stop the violence and rescue the accused. As one key informant shared:

*"There are places where women are protected, where men are protected, where people speak out. It's all about networks."*

- Key informant working as a researcher in PNG

Some communities and village courts are proactively trying to engage with SARV by coming up with by-laws. In the Eastern Highlands and Chimbu, strong human rights defenders have been a driving force at the community level in preventing and responding to cases of SARV. The CSO Voice for Change in Jiwaka<sup>402</sup> supports their local communities to develop community by-laws not only on GBV but also on SARV. In remote and rural parts of the country, human rights defenders, CSOs and faith-based organizations are on the frontline, working on prevention and providing support services, and are the best chance for women to access justice. Investing in them will not only address GBV, but also SARV. As one key informant shared:

*“Survivors say, I will forgive everyone if someone can take this mark off my head that has been put there.”*

– Key informant working as a researcher in PNG

**Faith-based organizations can play an important role in preventing GBV.** In PNG, mainstream churches such as the Catholic Church and Lutheran Church have worked to address SARV. This grew out of a need to coordinate messaging due to misinterpretation of the Bible by smaller Christian churches. For example, some of the practices of the more charismatic Pentecostal churches contribute to the problem of SARV by preaching about evil spirits, the devil and the need to exorcise, all of which involve identifying and stigmatizing individuals. While some faith-based organizations have made important progress in denouncing SARV, others may be more reluctant to speak out against GBV because one of their core values is keeping families together.

## KEY LESSONS

- **Awareness-raising programmes on laws, rights and available services remains a crucial goal across settings.**

In these complex settings, awareness-raising is still needed to educate women and girls on their rights as they relate to GBV, and how to access justice and support services if needed. While the passage of laws is important, women and girls must be aware of the protections afforded to them to access these protections.

- **Investment in primary prevention programming is still sorely needed.**

While awareness-raising is still needed in some settings, primary prevention remains the most effective way to address the root causes of GBV. This kind of programming often takes time and sustained investment.

- **Greater evidence on what works to prevent GBV is needed to adapt these programmes to different settings.**

While there is a growing body of evidence on what works to prevent GBV, there is comparatively less evidence on what works in complex settings such as the ones described in this paper. More evidence is needed to effectively adapt promising programmes.



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## **CHAPTER 8: KEY FINDINGS AND RECOMMENDATIONS**

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Image Credit: © IDLO

# CHAPTER 8: KEY FINDINGS AND RECOMMENDATIONS

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A focus on access to justice for GBV survivors in six complex contexts has yielded several key lessons to guide future interventions to improve GBV law, policy and programming.

Presented below are **key findings and recommendations** to advance women's access to justice in response to GBV in complex settings. They are adaptable by all stakeholders, including international organizations and donors, national, regional, or local governments, justice actors, humanitarian responders, research and academic institutions.

## KEY FINDINGS

### Context first

**GBV is more common and more severe in complex situations.** Complex situations exacerbate violence against women and girls and put them at even greater risk of suffering various forms of violence. The case studies have addressed some of the most violent contexts for women in the world. Gaining a deeper understanding of the specific manifestations of GBV in complex situations, and their multidimensional effects on women and girls in all their diversity is crucial in each context to developing subsequent interventions that will help increase justice for survivors. An act of GBV can trigger other acts of GBV and other types of human rights violations. Conversely, when a whole political system collapses, or a generalized crisis emerges, it also

impacts GBV, such as in the case of an increase of IPV during conflict or lockdowns.

**Complexity permeates all aspects of each context surveyed in this report but tends to be obscured by insufficiently tailored interventions.** The country case studies examine complexity arising from health emergencies, armed conflict, climate disasters and organized crime. They amply show that it is not only the emergency or the social and political environment that make access to justice complex, but the justice systems themselves can be complex and multi-layered. For instance, various systems of formal law coexist with customary justice systems and may or may not be integrated. Additionally, situations change quickly giving rise to volatility of institutions and social instability. Consequently, interventions that are premised on standardized operating procedures for relatively stable environments will be difficult, if not impossible, to implement in complex situations.

**More focus is needed on the role of non-State, private and religious actors.** In the contexts studied in this paper, organized criminal groups, religious organizations, and other private actors play a central role in women's and girls' experience of GBV. They can impede or facilitate access to justice. This calls for a focus on accountability of key non-State actors and their role in justice for GBV survivors.



## Survivors at the centre

**Being survivor-centred, particularly in complex situations, requires a deeper understanding of how survivors experience justice and what it means to them.** The multiple challenges of meeting peoples' basic humanitarian needs in complex situations often supersede imperatives for justice. There are pervasive difficulties to including survivor voices in justice processes. Experiences across the complex settings examined in this paper have shown that decision-makers often overlook the legitimacy of survivors' voices perceiving them to be, for instance, political, because of their strong call for accountability for the injustices they have experienced. Survivors require a lot of support to be able to meaningfully advocate for justice. Therefore, it is essential to listen to survivors and fully understand their needs and interpretations of justice before crafting justice interventions. For survivors, justice may be tied to conviction and punishment, or it may be linked to truth and dignity, or an acknowledgement of the harm done to them. It may also be linked to restorative justice as well as social and economic empowerment. Survivors' voices must be central to the interventions designed for them.

## Gender equality as foundational

**Human rights and CEDAW have foundational value for justice interventions to address GBV in complex situations.** A basic provision of the right of access to justice for GBV is that the standards established by CEDAW apply under all circumstances<sup>403</sup> – in conflict, post-conflict and peacetime – and that other international rules, for example, international criminal law,<sup>404</sup> international

refugee law<sup>405</sup> and international humanitarian law, and the imperatives of the Security Council agenda on women, peace and security are complementary to the rules of international human rights law.<sup>406</sup>

**There are limits to the humanitarian machinery's ability to address development issues such as access to justice and gender equality.**

Humanitarian action, for example in the framework of United Nations peacekeeping missions, is often disjointed from rule of law development activities. That disconnectedness can obstruct interventions to strengthen justice institutions, improve the capacity of justice actors, and advocate for the enactment of GBV-related laws. Significant effort must be made to draw the link between humanitarian and development needs, with access to justice for GBV survivors crucial to both sets of goals. While immediate protection and humanitarian issues need to be addressed, the overall condition of the daily reality of women's lives will not change without addressing the longer-term issue of transforming gender power relations. Particularly in complex situations, humanitarian and development assistance must do more than apolitical gender mainstreaming. Consideration must be given to the complexity of the situation as well as to the historical context of gender discrimination rooted in law, social norms and cultural practice.

## RECOMMENDATIONS

### 1. Develop and implement a comprehensive survivor-centred justice response to GBV

Legislation on GBV must move beyond over-reliance on criminal justice responses to encompass all relevant areas of law. All forms of GBV must be recognized as crimes, but criminal justice is only one aspect of the legal response that is needed to achieve justice for survivors and an end to violence against women. Comprehensive legal frameworks on GBV include provisions in criminal, civil, administrative, labour, or other areas of law and are premised on a model of substantive equality for women and girls. As such, they should be developed with the meaningful participation of women's groups and CSOs and of survivors themselves.

New laws are only a small part of a larger process of reform, and building GBV response relies on strengthening areas other than justice such as health, social care and economic support. Therefore, there is a need to create or strengthen mechanisms, including referral systems or pathways, that enable justice actors, police, prosecutors, judges and social services to cooperate and coordinate their decisions and approaches to tackling GBV. It is also important to remove discriminatory or gender-biased provisions from procedural and evidentiary requirements in criminal or other proceedings on GBV cases. Continuous monitoring and assessment of legislative implementation is crucial to measure impact and identify gaps for further

reform to achieve gender justice objectives.

Greater effort should be made to draw the link between humanitarian, criminal justice and development needs to foster justice for survivors of GBV that is premised on a model of substantive equality for women and girls. This would require awareness raising and the production of guidelines to help shift the mindset of decision-makers and implementers from a purely humanitarian or criminal law to a gender transformative approach to justice for GBV survivors.

Understanding how violence is perpetrated and experienced using an intersectional approach can help tailor context-specific responses and initiatives that are able to reach the most vulnerable populations. Developing intervention strategies in consultation with women from marginalized communities helps integrate their concerns in GBV response and prevention initiatives. Participation and consultation with marginalized groups of women (such as women with disabilities and LGBT people) should be done from the outset of design of justice interventions throughout every stage of implementation to ensure that target groups benefit, to enhance representation and empowerment, and to improve the relevance and sustainability of GBV interventions. Including issues of intersectional discrimination is also crucial while training justice actors and service providers on GBV.

Increasing the capacity of justice actors, police, judges, traditional chiefs and lawyers to operate in



a survivor-centred and gender-responsive way is recommended to increase trust and use of the justice system. This should include promoting women's participation and leadership in the justice sector. Key justice actors require additional capacity strengthening to sensitize them to the needs of survivors and increase awareness of laws and their appropriate and fair implementation.

The creation of specialized mechanisms has been deemed as a positive development in several of the countries included in this paper, but the operation of these mechanisms faces many challenges. Specialized police, prosecution units or courts must be adequately resourced, closely monitored and meaningfully embedded within the justice system with capacity to address criminal, civil and family law issues to be sustainable and effective. Special units that lack needed resources and stand apart from the regular justice apparatus will fail to become a useful tool of justice for survivors.

Justice is an expensive component of service delivery, requiring sufficient funding to execute effectively, and in many complex settings, resources or expertise on GBV are low or decimated by conflict or crisis. In such contexts, the entire justice infrastructure may be dismantled as well. Programmes should prioritize investments that mitigate the economic and financial constraints curtailing GBV survivors' access to justice.

## **2. Foster integration of services for GBV survivors**

Measures and interventions at all stages of the justice chain must be designed with paramount concern for the physical safety and security of women. Survivors of GBV must be supported and empowered to participate in decision-making about their lives during investigations and judicial proceedings, as well as more broadly, in legal and policy processes. GBV against women remains severely under-reported, as fear of being stigmatized and the multitude of barriers to accessing justice discussed in this paper discourage survivors from disclosing their experiences. Interventions should encourage the reporting of GBV to competent authorities by circulating and disseminating information at national, rural and local levels, including on alternative ways to report in complex settings.

As evidenced in this study, survivors face additional challenges that lead to the case being dropped from the formal justice process. The lack of support available to survivors and the many ways in which the justice system itself revictimizes them are key reasons why cases of GBV have high attrition rates.<sup>407</sup> Sensitive verbal, non-verbal and written communication can help to mitigate stigmatization. All those assisting survivors should get comfortable with the relevant terminology, so they do not unwittingly transmit their personal discomfort or embarrassment to the survivor. This is very important at all stages of the process, in particular during early contacts to build trust and rapport in the relationship. All communication

with and about the survivor should avoid the idea that the survivor has been somehow tarnished or irreparably damaged by the experience of GBV.<sup>408</sup>

Protection for survivors is critically important when accessing justice but tends to be weak across complex settings. Increasing protection (including safe spaces, shelters, protection orders and other services) may foster feelings of safety and willingness to report violence. Where it is possible for survivors to seek protection orders, they should be offered holistic support throughout the process, including in the long term, once the order has been served.

Service providers require continual training on their roles and responsibilities. In addition to the laws and service provision, training must seek to change attitudes and harmful gender and social norms around GBV that service providers may have.

Multisectoral coordination and strong referral pathways, particularly between police and other service providers, enhance access to justice. Police officers need basic resources to respond to GBV, and strong networks between the police and local communities, including human rights defenders and CIJ actors, create a handshake between grassroots networks and the legal justice system in bringing GBV cases to legal justice, should the survivor wish to pursue formal justice. This referral pathway should be as up to date as possible.

Case management in complex contexts should be strengthened and scaled up through mentoring, learning exchanges and rotational learning experiences. Investment in

case management should be heavily expanded, as it has been shown to increase survivor's access to formal justice.

Inter-institutional coordination among operators of the justice system is required, given that it continues to be a limitation for adequate protection of survivors. This should include community interventions with strategies aimed at dissuasion and control of crime in the communities, because they may retaliate against the survivor.

Diverse actors are involved in the prevention of GBV, with significant investments in community-based approaches, working with faith-based organizations, men, youth and the education sector. However, prevention is still the least developed and least-funded sector in efforts to address GBV, and very few evaluations exist on the effectiveness of primary prevention programmes that focus on social norms change.

### **3. Strengthen legal empowerment of women**

The role of the law and an effective justice sector that is seen to hold perpetrators accountable are important in stopping violence from happening in the first place. The prohibition of GBV can have a preventative effect. However, mistrust of justice institutions can significantly hamper the application even of strong laws, and in complex settings, there are high levels of public mistrust of the entities responsible for investigating, prosecuting and punishing perpetrators of GBV. Greater effort should be made to raise

awareness of women and communities on laws, rights and available services to increase access to justice and trust in justice institutions, and to address harmful and discriminatory social norms through a participatory, community-wide approach involving key stakeholders, including men, schools, community leaders and formal and informal justice actors. This would have the effect, in the long run, of increasing awareness of GBV as a problem and decreasing social acceptance of GBV, thus contributing to primary prevention.

#### **4. Support women's collective action and advocacy**

Community networks, consisting of women's organizations, human rights defenders, other CSOs and faith-based organizations, are important stakeholders in supporting survivors in seeking justice. They exist in all countries and have organizing capacity in the most hard-to-reach areas. Local women's organizations are often the first to respond to GBV in a situation of crisis, such as a climate disaster or COVID-19. Not only do they provide support services, but they are also engaged at the community level in creating awareness about GBV. Local women's organizations play an essential role in case management. Funding needs to prioritize local women's organizations, as they are often the only ones offering specialized services for survivors of GBV. Justice programmes need to recognize and support women's groups, women's rights organizations, and the women's movement by building local capacity to address all forms of GBV, increasing resources and establishing

partnerships and cooperation with these organizations. Funding is a key aspect of this support. Quality, flexible and sufficient funding from States, the private sector, foundations and other donors should be provided to autonomous women's rights organizations working to end GBV.<sup>409</sup>

In situations of conflict or political instability, women's organizations and women human rights defenders may be targeted for violence and persecution. Support to women's organizations working to end GBV cannot be separated from efforts to create and safeguard civic and political space for collective action and advocacy.

#### **5. Expand GBV monitoring and data collection**

More rigorously collected data on GBV is needed for advocacy, legal reform and stronger justice programming. This includes prevalence data, through population-based surveys, and administrative data that allows for monitoring of the justice system and the evaluation of promising practices. This is a difficult task in crisis, conflict and other complex situations, as data may be inexistent, difficult to obtain, or collected without sex-disaggregation, thus perpetuating gender-blind responses. In disaster situations, women and girls are rendered invisible due to the failure to collect comprehensive and timely sex- and gender-disaggregated data, which can be used by government agencies and other humanitarian actors in preparing customized and more inclusive response and assistance during natural disasters and other humanitarian emergencies.

Monitoring and accountability of justice systems is crucial to ensuring access to justice for survivors. This includes court monitoring, monitoring of the police units, and accountability for GBV commitments made by the Government (including through peace agreements). Rigorous monitoring of the courts and justice mechanisms is necessary to ensure consistent, fair application of the law, to root out corruption, and to increase trust. Funding for data collection should focus on women telling their own stories and building the evidence base through their own experiences.

Greater evidence on what works to improve access to justice for GBV survivors is needed to adapt justice programmes to settings such as health emergencies, armed conflict, climate disasters or those in which organized crime is endemic. Furthermore, in these settings, there is a need to include a focus on accountability of key non-State actors and their role in justice for GBV survivors.

## CONCLUSION

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Women and girls' vulnerability to violence is exacerbated in complex contexts, where GBV is more common and more severe. Although globally, significant progress has been registered on national legal reform and adoption of new legislation on gender equality, a lot remains to be done in eliminating GBV, upholding women's rights and ensuring access to justice for survivors in complex situations. This paper has outlined how, in the most difficult of circumstances, women and girls resist GBV through seeking vindication of their rights, justice and reparation. It shows the ways in which justice solutions have been found, so that justice systems can fulfil the function, described by the CEDAW Committee, of "[optimizing] the emancipatory and transformative potential of law" through effective access to justice.<sup>410</sup>

A survivor-centred approach is key to fulfilling the promise of justice in response to GBV, in all circumstances, including complex situations. In seeking access to justice, women and girls should be considered not just as victims of crimes, but as participants and co-creators of the institutions tasked with vindicating their rights, and agents in rebuilding their lives.

# ENDNOTES

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- 1 According to the World Health Organization (WHO), across their lifetime, some 736 million women worldwide – approximately 1 in 3 – are subjected to physical or sexual violence by an intimate partner or sexual violence by a non-partner. Thirty eight percent of murders of women are committed by intimate partners and 6% of women report to having been sexually assaulted by someone other than their partner. (See WHO, “Violence against Women”, 9 March 2021.) According to the United Nations Office on Drugs and Crime (UNODC), every 11 minutes, a woman or girl somewhere in the world is killed by someone in her own family. (See UNODC, *Killings of Women and Girls by their Intimate Partner or other Family Members: Global Estimates 2020*, Vienna, 2021).
- 2 IDLO, together with partners, already documented major challenges to women’s access to justice, including intimate partner violence and other forms of GBV, in the beginning of the COVID-19 pandemic, in UN Women and others, *Justice for Women Amidst Covid-19* (New York, 2020).
- 3 United Nations Office for the Coordination of Humanitarian Affairs, “At a Glance | Global Humanitarian Overview”, n.d., available at <https://2021.gho.unocha.org/introduction-and-foreword/glance/> (accessed on 22 October 2021).
- 4 UN Women, *Climate change, disasters, and gender-based violence in the Pacific* (Fiji, 2014).
- 5 All data on Afghanistan was collected before 15 August 2021 and the Taliban takeover of the country.
- 6 UN Women and others, *Justice for Women Amidst Covid-19* (New York, 2020).
- 7 WHO, “Violence against Women”, 9 March 2021, available at <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (accessed on 22 October 2021).
- 8 United Nations Office for the Coordination of Humanitarian Affairs, “At a Glance | Global Humanitarian Overview”, n.d., available at <https://2021.gho.unocha.org/introduction-and-foreword/glance/> (accessed on 22 October 2021).
- 9 WHO, “Violence against Women”, 9 March 2021, available at <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (accessed on 22 October 2021).
- 10 At the international level, CEDAW, as reinterpreted by General Recommendation 35 (2017) on gender-based violence against women, updating General Recommendation 19 (1992) on violence against women, is the leading instrument. At the regional level, three treaties address this issue in the Americas (the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994, known as “Belém do Pará”), Africa (the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted in 2003 by the African Union, known as “Maputo Protocol”) and Europe (the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of 2011, known as “Istanbul Convention”). Chapter 2 of this paper discusses the international standards on ensuring justice for GBV survivors in more detail.
- 11 Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General recommendation No. 35 on gender-based violence against women*, updating general recommendation No. 19, 14 July 2017, (CEDAW/C/GC/35), para. 1. UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993 (A/RES/48/104).
- 12 UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993 (A/RES/48/104).
- 13 CEDAW/C/GC/35, para. 12.
- 14 Inter-American Commission of Women, Follow-up Mechanism to the Belém do Pará Convention (MESECVI), Committee of Experts’ Declaration on Femicide, 13–15 August 2008, Washington, D.C. (OEA/Ser.L/II.7.10MESECVI/CEVI/DEC. 1/0815).
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- 16 WHO, “Violence Info – Intimate Partner Violence”, n.d., available at <http://apps.who.int/violence-info/intimate-partner-violence> (accessed on 22 October 2021).
- 17 WHO, *Violence Against Women Prevalence Estimates, 2018* (Geneva, 2021), available at <https://www.who.int/publications/i/item/9789240022256>.



- 18 United Nations Secretary-General, *Conflict-related Sexual Violence. Report of the United Nations Secretary-General* (New York, 2019), available at <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/07/report/conflict-related-sexual-violence-report-of-the-united-nations-secretary-general/2019-SG-Report.pdf>.
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- 20 UNICEF, "Child Marriage", n.d., available at <https://www.unicef.org/protection/child-marriage> [accessed on 9 September 2022].
- 21 Stop Sorcery Violence, "Sorcery related violence terminology", 12 July 2018, available at <http://www.stopsorceryviolence.org/sorcery-related-violence-terminology/>.
- 22 UN General Assembly, *United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly*, 8 January 2001 (A/RES/55/25).
- 23 UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, Article 3.
- 24 Council of Europe, GREVIO General Recommendation No. 1 on the digital dimension of violence against women, 20 October 2021, paras. 22 and 23. Gender-based violence and its forms in the digital space has emerged as a relatively recent preoccupation among specialized international and regional human rights mechanisms addressing violence against women. For a recent discussion, see: Rosa Celorio, "The Human Rights of Women in the Digital World", in *Women and International Human Rights in Modern Times: A Contemporary Casebook*, (Cheltenham, UK, Edward Elgar Publishing, 2022).
- 25 Inter-American Commission of Women, Follow-up Mechanism to the Belém do Pará Convention (MESECVI), "Inter-American Model Law on the Prevention, Punishment and Eradication of Violence against Women in Political Life", 2017, p. 24. (OEA/Ser.L/II), available at [ViolenciaPolitica-LeyModelo-EN.pdf](#) (oas.org). It should be further noted that MESECVI has adopted strong resolutions recognizing political violence, such as the Declaration on Political Harassment and Violence against Women, adopted in Lima, Peru, on 15 October 2015 on the occasion of the Sixth Conference of the States Parties to the Convention of Belém do Pará.
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- 27 European Institute for Gender Equality, *Estimating the costs of gender-based violence in the European Union*" (Luxembourg, 2014).
- 28 European Institute for Gender Equality, "GBV costs the EU Euro 366 billion a year", 7 July 2021, available at <https://eige.europa.eu/news/gender-based-violence-costs-eu-eu366-billion-year>.
- 29 Based on the limited data available, UN Women estimated that only 5 per cent (around 206 million) of the USD 4.2 billion allocated by development partners to justice in 2009 was spent on projects in which gender equality was a primary aim. UN Women and others, *Justice for Women: High Level Group Report* (New York, 2019), available at [https://www.idlo.int/sites/default/files/pdfs/publications/Justice-for-Women\\_Full-Report-English.pdf](https://www.idlo.int/sites/default/files/pdfs/publications/Justice-for-Women_Full-Report-English.pdf).
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- 33 UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), 18 December 1979, United Nations, *Treaty Series*, vol. 1249, p. 13, article 2 (e).
- 34 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Article 5(2).
- 35 For a discussion on approaches to ensure meaningful participation of survivors, see also UN Women and others, *The Handbook of Gender-responsive Police Services* (New York, 2019), available at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2021/Handbook-on-gender-responsive-police-services-en.pdf>.

- 36 See CEDAW Committee, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010 (CEDAW/C/GC/28), para. 18; Rosa Celorio, “The Human Rights of Women in the Digital World”, in *Women and International Human Rights in Modern Times: A Contemporary Casebook* (Cheltenham, UK, Edward Elgar Publishing, 2022); Lorena Sosa and Ruth M. Mestre i Mestre, “Ensuring the Non-discriminatory Implementation of Measures against Violence against Women and Domestic Violence: Article 4, Paragraph 3, of the Istanbul Convention”, Council of Europe (Strasbourg, 2022), available at <https://rm.coe.int/paper-on-article-4-paragraph-3-of-the-istanbul-convention/1680a5d92e>.
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- 38 CEDAW/C/GC/35, para. 28.
- 39 These aspects of a survivor-centred approach were suggested by the participants at the Expert Group Meeting convened by IDLO and GWI on 22 July 2021.
- 40 Sarah Bott and others, “Preventing and Responding to Gender-Based Violence in Middle and Low-Income Countries: A Global Review and Analysis”, Policy Research Working Paper, No. 3618 (Washington, D.C., World Bank, 2005), available at <https://openknowledge.worldbank.org/handle/10986/8210>.
- 41 “Safety audits” are a key methodology adopted in the Safe Cities Initiative and have been used in conflict and fragile contexts as well, as part of risk mitigation activities. See UN Women, *Safe Cities and Safe Public Spaces: Global Results Report* (New York, 2017), available at <https://www.unwomen.org/en/digital-library/publications/2017/10/safe-cities-and-safe-public-spaces-global-results-report>.
- 42 S. Laurel Weldon and Mala Htun, “The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective 1975/2005”, *American Political Science Review*, vol. 106, No. 3 (2012).
- 43 S. Laurel Weldon and Mala Htun, “Feminist mobilization and progressive policy change: why governments take action to combat violence against women”, *Gender and Development*, vol. 21, No. 2 (2013).
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- 45 Priya Gopalan, “Rejecting Notions of ‘Honour’ to Mitigate Stigma: Prosecutions for Sexual Violence before the Bangladeshi International Criminal Tribunals”, 27/2021, Centre for Women, Peace and Security Working Paper Series (London, London School of Economics and Political Science, 2021), available at <https://www.lse.ac.uk/women-peace-security/assets/documents/2021/WPS27Gopalan.pdf>.
- 46 CEDAW General Recommendation 33 on women’s access to justice (CEDAW/C/GC/33), para. 14(c).
- 47 DAC Recommendation on the Humanitarian-Development-Peace Nexus, OECD Legal Instruments, 2022, available at <https://legalinstruments.oecd.org/public/doc/643/643.en.pdf>.
- 48 See the list of stakeholders that committed to the Agenda for Humanity by 2019, available at <https://agendaforhumanity.org/explore-commitments/stakeholder.html>.
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- 50 Maureen Murphy and others, *What works to prevent violence against women in conflict and humanitarian crisis: Synthesis Brief*, 2019, available at <https://www.preventvawg.org/sites/default/files/2022-03/20.PDF>.
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- 52 UN Women, “Facts and Figures: Humanitarian Action”, n.d., available at <https://www.unwomen.org/en/what-we-do/humanitarian-action/facts-and-figures#notes> (accessed on 9 September 2022).
- 53 United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide: Gender-Related Killings of Women and Girls* (Vienna, 2018).
- 54 Luis Guillermo Solís and Francisco Rojas Aravena (eds.), *Crimen Organizado En América Latina y El Caribe* (Santiago de Chile, 2008).
- 55 GBV AoR, Global Protection Cluster, *Gender Based Violence in Emergencies. Strengthening Access to Justice for GBV Survivors in Emergencies* (2020), available at <https://gbvaor.net/node/911>.

- 56 GWI, Care, IRC and UK Aid, *Intersections of Violence Against Women and Girls with State Building and Peace Building: Lessons from Nepal, Sierra Leone and South Sudan* (2020), available at [https://www.care-international.org/files/files/WhatWorksReport\\_Violence\\_Statebuilding.pdf](https://www.care-international.org/files/files/WhatWorksReport_Violence_Statebuilding.pdf).
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- 59 Experts consulted include: Dr Fiona Hukula, Gender Advisor, Pacific Islands Forum; Ms Anita E. Baleda, Chief, Policy Development, Planning, Monitoring and Evaluation Division, the Philippine Commission on Women; Dr Rosa Celorio, Associate Dean for International and Comparative Legal Studies, George Washington Law School and Burnett Family Professorial Lecturer in International and Comparative Law and Policy; Sara Hossain, Partner, Dr Kamal Hossain and Associates, and Honorary Executive Director, Bangladesh Legal Aid and Services Trust (BLAST); Priya Gopalan, international criminal law and human rights lawyer, Member for Asia Pacific States of United Nations Working Group on Arbitrary Detention; Melissa Scaia, Director of International Training, Global Rights for Women; Lisa-Marie Rudi, Legal Officer, REDRESS; Mary Beth Bognar, Gender Justice Specialist, the International Legal Foundation (ILF).
- 60 Albert J. Mills, "Most Different Systems Design", in *Encyclopedia of Case Study Research*, Albert J. Mills, Gabrielle Durepos and Elden Wiebe, eds. (Sage, 2010). In comparative research, "most different systems" designs are applied to compare very different cases, all of which have the same dependent variable in common, so that any other circumstance that is present in all the cases can be regarded as the independent variable.
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- 63 Liz Kelly, "Inside outsiders: Mainstreaming violence against women into human rights discourse and practice", *International Feminist Journal of Politics*, vol. 7, No. 4 (2005), pp. 471-495.
- 64 Sally Engle Merry, "Gender violence and the CEDAW Process", in *Translating International Law into Local Justice* (Chicago, University of Chicago Press, 2006), pp. 72 and onwards.
- 65 Sally Engle Merry, "Gender violence and the CEDAW Process", in *Translating International Law into Local Justice* (Chicago, University of Chicago Press, 2006).
- 66 The UN Decade for Women was the period between 1976 and 1985, in which the United Nations, as per the United Nations General Assembly Resolution 3520 (XXX) adopted in December 1975, committed to devote effective and sustained national, regional and international action to women and development. The proposal for a UN Decade for Women was an outcome of the first United Nations women's conference in Mexico City, in 1975. Two more global women's conference were organized by the United Nations within the Decade, one in Copenhagen (1980) and one in Nairobi (1985). The Nairobi Forward-looking Strategies (1985) document stated that "violence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped" (para. 258). In the face of such "gender-specific violence", "governments should intensify their efforts to establish or strengthen forms of assistance to victims of such violence through the provision of shelter, support, legal and other services" (para. 288).
- 67 CEDAW Committee, *General Recommendation No. 19 on violence against women*, 1992 (A/47/38).
- 68 Desirée Bernard, former CEDAW member from Guyana, quoted in Sally Engle Merry, "Gender violence and the CEDAW Process", 2006, p.76.
- 69 This resulted for instance in the inclusion of "violence against women" as a specific area of strategic action in the Beijing Platform for Action of 1995, the outcome document of the Fourth United Nations World Conference on Women. Today, the Beijing Platform for Action is still the most comprehensive agenda for women's empowerment worldwide, and its implementation is subject to in-depth review by the Commission on the Status of Women, every five years.
- 70 Feride Acar and Raluca Popa, "From Feminist Legal Project to Groundbreaking Regional Treaty: The Making of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence / D'un projet juridique féministe à un traité régional novateur: la fabrication de la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique", *Journal Européen des Droits de l'homme/ European Journal of Human Rights*, No. 3 (2016), pp. 287-319.

- 71 In General Recommendation 35 (2017), the CEDAW Committee has updated its seminal General Recommendation 19 taking into account the learning and significant developments in international law that have taken place in the 25 years since its adoption.
- 72 CEDAW/C/GC/35, para 29 (e). This paragraph cites *Vertido v. Philippines* (2010) and *R.P.B. v. Philippines* (2014).
- 73 See, for example, *Reyna Trujillo Reyes and Pedro Arguello Morales v. Mexico*, 29 August 2017, CEDAW/C/67/D/75/2014, para 9.3. In this case, concerning the murder of a 20-year-old woman, an alleged perpetrator was investigated and prosecuted, but acquitted due to insufficient evidence. The CEDAW Committee found that “the authorities of the State party do not appear to have carried out any activity with a view to clarifying the circumstances of the crime or identifying the perpetrator, such as opening new lines of investigation”, after the date of the acquittal.
- 74 CEDAW/C/GC/35, para 31(a).
- 75 Specifically, article 20 (general support services), article 22 (specialist support services), article 23 (shelters), article 24 (telephone helplines), article 25 (support for victims of sexual violence), article 26 (protection and support for child witnesses), article 51 (risk assessment and risk management), article 52 (emergency barring orders), article 53 (restraining or protection orders), and article 57 (legal aid).
- 76 CEDAW/C/GC/35, para 33.
- 77 CEDAW/C/GC/35, paras 26 and 30. The details of how judicial stereotypes contribute to violations of women’s right to equality before the law are demonstrated in individual communications such as *Angela González Carreño v. Spain* (2014), *Isatou Jallow v. Bulgaria* (2012) and *J.I. v. Finland* (2018). The key case is *Angela González Carreño v. Spain*. Angela González Carreño wanted to protect herself and her child Andrea from the violence and harassment of her ex-husband F.R.C., the father of Andrea. The marriage ended when Andrea was three years old. F.R.C. used contact visits with his daughter as opportunities to physically attack his ex-wife Angela. Despite Angela making more than 30 reports of violence to the authorities, he was only investigated, convicted and fined €45 on one occasion. Andrea told the family court that she was afraid of her father, that he tore up her paintings, and she no longer wanted to see him. Despite this, the family court required contact to continue, and eventually, F.R.C. killed Andrea during a contact visit and then killed himself. Andrea was seven years old when she was killed. The CEDAW Committee found that all these elements reflect a pattern of action that responds to a stereotyped conception of visiting rights based on formal equality which, in the present case, gave clear advantages to the father despite his abusive conduct and minimized the situation of mother and daughter as victims of violence, placing them in a vulnerable position. In this connection, the Committee recalled that in matters of child custody and visiting rights, the best interests of the child must be a central concern and that when national authorities adopt decisions in that regard, they must take into account the existence of a context of domestic violence. The CEDAW Committee also emphasized the child’s right to be heard in legal processes. This pathbreaking case shows that stereotypes need to be comprehensively addressed so that a clear view of violent behaviour is taken to prosecute crimes, to intervene with civil law protective measures when women and children are at risk, and to ensure that family law operates to protect the well-being of individuals.
- 78 CEDAW/C/GC/33, paras 20 (e) and (f).
- 79 CEDAW/C/GC/33, para 15 (f).
- 80 Council of Europe, *Istanbul Convention. A Global Tool to Prevent and Combat Violence against Women and Girls* (Strasbourg, 2014).
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## The Global Women's Institute

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**The Global Women's Institute (GWI) is a globally-recognized leader in the field of gender-based violence.** GWI bridges research, education, and action to advance gender equality and reduce violence and discrimination against women and girls. By strengthening the global knowledge base on gender issues, GWI makes a difference by informing programmes and policies that address a variety of issues affecting gender equality, women's empowerment, and gender-based violence in conflict and humanitarian settings. GWI finds interventions that work, explains why they matter, and takes action to bring about change.



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